BELLSOUTH

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March 25, 2005

Mr. Charles Terreni
Chief Clerk of the Commission
Public Service Commission of South Carolina
Post Office Drawer 11649
Columbia, South Carolina 29211

Re: Petition to Establish Generic Docket to Consider Amendments to Interconnection Agreements Resulting From Changes of Law
Docket No. 2004-316-C

Dear Mr. Terreni:

By letters dated March 9, 2005 and March 15, 2005, BellSouth Telecommunications, Inc. ("BellSouth") filed various Orders by which other state Commissions have addressed the Federal Communications Commission's ("FCC's") *Triennial Review Remand Order*. As a supplement to those filings, BellSouth respectfully submits copies of the following:

Order of Commissioner Peevey of the California Public Utilities Commission (March 11, 2005)(Exhibit A).

Order of Commissioner Kennedy of the California Public Utilities Commission (March 11, 2005)(Exhibit B)

Order of the Maine Public Utilities Commission (March 17, 2005) (Exhibit C)

Order of the United States District Court for the Eastern District of Michigan (dissolving the preliminary injunction it previously entered) (March 15, 2005)((Exhibit D).

Order of the New York Public Service Commission (March 16, 2005)(Exhibit E)

In particular, BellSouth would like to call the Commission's attention to the Maine decision because, to the best of BellSouth's knowledge, it is the only state Commission Order that specifically analyzes the Georgia Commission's erroneous application of the *Mobile-Sierra* doctrine. The Maine Commission stated:

> [W]e reject the reasoning of the Georgia Public Service Commission in its March 8, 2005 Order (Docket No. 19341-U) regarding the applicability of the *Mobile Sierra* doctrine because the contracts at issue here contain change of law provisions and therefore already contemplate regulatory changes. Further, the Georgia PSC seems to be saying that, without a showing of heightened public interest, the FCC cannot unilaterally override an interconnection agreement but can, without a showing of heightened public interest, order parties to amend their agreements to be consistent with the FCC's new rules. We do not find this distinction persuasive.
>
> Finally, as Verizon correctly noted, the FCC stated repeatedly throughout its Order that ILECs would have no obligation to provide CLECs with access to the delisted UNEs and that the transition plan does not permit CLECs to add new de-listed UNEs. We find the FCC's specificity regarding these issues to be clear and thus, we do not believe it to be appropriate or necessary to ascribe anything but their plain meaning to the FCC's directives. Accordingly, we deny the requests of MCI and the CLEC Coalition for an order staying implementation of the FCC's rules pending interconnection agreement negotiations.

See Maine Order (Exhibit C) at 4-5 (footnotes omitted).

Additionally, Exhibit F is a copy of a letter BellSouth recently filed with the FCC regarding BellSouth's designation of wire centers that satisfy the FCC's nonimpairment thresholds for high-capacity loops, transport and dark fiber. As more fully explained in that letter, BellSouth recently discovered an error in the mathematical formula that was used to count retail digital access lines on a per 64 kbps-equivalent basis, and as a result of this error, the wire centers meeting the Commission's nonimpairment thresholds were not correctly identified in BellSouth's February 18, 2005 letter to the FCC. BellSouth has retained an independent third party to review the methodology BellSouth utilized in implementing the nonimpairment thresholds set forth in the *Triennial Review Remand Order* and to identify the specific wire centers where those thresholds have been met. Once this independent third-party review is complete, BellSouth will provide the FCC and the industry with the results. This independent, third-party review will be completed and the results disseminated before BellSouth rejects, or challenges through dispute resolution, any orders for new unbundled high-capacity loops, transport, and dark fiber pursuant to the *Triennial Review Remand Order*.

Significantly, the situation described in Exhibit F has no effect on the FCC's nation-wide finding of nonimpairment for local circuit switching.

Finally, AmeriMex Communications Corp. filed an Emergency Petition in this docket seeking relief similar to that sought by other CLECs in their filings. Exhibit G is a copy of a letter from AmeriMex withdrawing its Emergency Petition because it "has entered into a commercial agreement with [BellSouth], rendering the Petition moot."

By copy of this letter, I am serving all parties of record.

Sincerely,

Patrick Turner

Patrick W. Turner

PWT/nml
Enclosure
DM5 578154

EXHIBIT A

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Petition of Verizon California Inc. (U 1002 C) for Arbitration of an Amendment to Interconnection Agreements with Competitive Local Exchange Carriers and Commercial Mobile Radio Service Providers in California Pursuant to Section 252 of the Communications Act of 1934, as Amended, and the Triennial Review Order	Application 04-03-014 (Filed March 10, 2004)

Assigned Commissioner's Ruling Granting In Part Motion for Emergency Order Granting Status Quo for UNE-P Orders

Introduction

On March 1, 2005, a joint motion was filed by MCI, Inc. on behalf of its subsidiary MCImetro Access Transmission Services, LLC ("MCImetro") and its other California local exchange subsidiaries that have adopted MCImetro's interconnection agreement with Verizon California, Inc. (collectively "MCI"); nii Communications, Ltd., ("nii"); Wholesale Air-Time, Inc. ("WAT") (collectively "Joint CLECs"); and The Utility Reform Network ("TURN") (collectively "Joint Movants"). In the Motion, Joint Movants allege that Verizon California Inc. (Verizon), by and through its parent company, Verizon Communications Corporation (Verizon) has stated that beginning on March 11, 2005, Verizon will reject all orders for new lines utilizing the unbundled network element platform (UNE-P). The Movants claim that in doing so Verizon would be taking steps that are inconsistent with Verizon's initiation of this arbitration proceeding, would unilaterally prejudge Verizon's still pending motions to withdraw certain parties from this proceeding, and breach its interconnection agreements with Joint CLECs. Each of the interconnection agreements in question, patterned after that between Verizon and MCImetro, provides that that Verizon shall provision unbundled network elements (UNEs) in combinations, including the "UNE Platform (UNE-P).

It is alleged that Verizon will take this action pursuant to its interpretation of the legal effect of the Federal Communication Commission's (FCC) recently issued Triennial Review Remand Order, released February 4, 2005 (TRRO). On February 10, 2005, at its website, Verizon provided a notice to CLECs with which it has interconnection agreements, Exhibit A in the Joint Motion, which identifies various facilities on which the FCC made findings of non-impairment with respect to various unbundled network elements, including those comprising the UNE-P, in the TRRO. The Verizon notice states that these "discontinued facilities" will not be available for addition under §251(c)(3) of the Telecommunications Act of 1996 and is subject to a transition period.

The Joint Movants thus seek a Commission order forbidding Verizon from rejecting such UNE-P orders pending compliance with the change of law provisions in the respective Interconnection Agreements and completion of this arbitration proceeding.

The Joint Movants concurrently filed a request for an order shortening time to respond to the motion by no later than 5:00 p.m., Friday, March 4, 2005, in order to enable the Commission to issue Joint Movants' requested relief prior to Verizon's implementation of its planned action to reject Joint CLECs' UNE-P orders beginning on March 11, 2005. Joint Movants argued that the shortening of time is therefore necessary to avoid substantial harm to the competitive marketplace and to consumers that Joint Movants allege would result from Verizon's planned actions. Verizon and SBC California objected to any shortening of time, contending the Movants could have made their request earlier.

Based on the representation that Movants were endeavoring to reach some resolution prior to filing their motion and that neither Verizon nor SBC California contend that the date on which Verizon will decline to offer new UNE-P arrangements is other than the date alleged by Movants, the Joint Movants' request for an order shortening time for responses to the Motion was granted by Administrative Law Judge Ruling (ALJ) on March 2, 2005.

Joint Movants seek a Commission order forbidding Verizon from rejecting such UNE-P orders pending compliance with the change of law provisions in the respective ICAs. Joint Movants claim that affected CLECs will be unable to place UNE-P orders in California after March 10, 2005, unless this Commission takes affirmative action to forbid Verizon from rejecting such UNE-P orders pending compliance with the change-of –law provisions in their respective interconnection agreements. Unless such Commission action is taken, Joint Movants claim that CLECs will sustain immediate and irreparable injury because they will be unable to fill service requests for existing and new UNE-P customers.

Pursuant to the schedule set by the ALJ, Verizon filed a response in opposition to the Joint Motion on March 4, 2005. AT&T Communications of California, Inc., TCG Los Angeles, Inc., TCG San Diego, Inc, and TCG San Francisco (jointly AT&T) and Anew Telecommunications, Corp. d/b/a Call America, DMR Communications, Navigator Telecommunications, TCAST Communications and CF Communications, LLC. d/b/a Telekenex (jointly Small CLECs) filed responses in support of the Joint Motion.

The ALJ also specifically identified two questions to be addressed in parties' responses relating to ¶ 227 of the TRRO. The ALJ also authorized replies, filed on March 7, 2005, to the Verizon response limited to these two questions and by Verizon to the AT&T and Small CLEC responses. In response to a March 7, 2005, email request, Joint Movants were granted leave to file a reply pursuant to Rule 45(g) on March 8, 2005.

Sequence of Events Leading to the Motion

On March 10, 2004 Verizon initiated this arbitration intended to address various interconnection agreement issues under change of law provisions and in light of the issuance of the Federal Communication's Commission's (FCC) Triennial Review Order on August 21, 2003. A number of uncertainties developed concerning the status of the TRO, including a federal court decision invalidating portions of the TRO and remanding the matter to the FCC. By ruling, the assigned ALJ questioned parties as to the need for the arbitration to go forward at that time. Ultimately Verizon filed a request on May 6, 2004 to hold the arbitration in abeyance for a brief period. On December 2, 2004, Verizon filed an updated amendment to its petition for arbitration and requested resumption. However, at that time the FCC issuance of what would become known as the TRRO, was imminent, but had not yet occurred.

On February 4, 2005, the FCC issued the TRRO, determining, among other things, that the ILECs are not obligated to provide unbundled local switching pursuant to

[1]Section 251(c)(3) of the Federal Act. The FCC made the TRRO effective as of March 11, 2005. The FCC adopted a transition plan that calls for CLECs to move their UNE-P embedded customer base to alternative service arrangements within twelve months of the effective date of the TRRO and noted the purpose of the transition plan was to avoid substantially disrupting service to millions of mass market customers, as well as to the business plans of competitors. (TRRO, ¶ 226). The FCC also prescribed the basis for pricing during the transition period for unbundled switching provided pursuant to Section 251 (c)(3).

Verizon issued, via its website for CLECs, a "Notice of FCC Action Regarding Unbundled Network Elements" on February 10, 2005 (Verizon Notice, attached as Exhibit A to the Joint Motion) in which in which Verizon notified CLECs that the TRRO had been released and, among other things, that Verizon would cease processing orders for new UNE-P lines starting March 11, 2005. Verizon provided notification to CLECs concerning how it intended to modify its service offerings in response to the TRRO and offered various "alternative arrangements" for CLEC review.

With respect to UNE-P Verizon noted it "is developing a short-term plan that is designed to minimize disruption to your existing business operations. This new commercial services offering would allow your continued use of Verizon's network ... for a limited period of time while a longer term commercial agreement is negotiated." Verizon goes on to state: "In any event, to the extent you have facilities or arrangements that will become Discontinued Facilities [including UNE-P], please contact your Verizon Account Manager no later than May 15, 2005 in order to review your proposed transition plans. Should you fail to notify Verizon of your proposed transition plans by that date, Verizon will view such failure as an act of bad faith intended to delay implementation of the TRO Remand Order and take appropriate legal and regulatory actions." (Joint Motion, Ex. A at p. 3).

At almost the same time, on February 14, 2005, Verizon wrote to the assigned ALJ requesting that in light of the issuance of the TRRO this arbitration should proceed

1 Even though the FCC's new unbundling rules end unbundling of certain UNEs under Section 251(c)(3), Verizon has commercial agreements that offer arrangements functionally equivalent to these UNEs, including UNE-P to existing and new customers, and under Section 251(c)(2) it cannot deny similar arrangements to other carriers without facing a charge of discrimination.

as quickly as possible. Verizon stated: "On February 4, 2005, the FCC issued its Triennial Review Remand Order ("TRRO"), memorializing the final unbundling rules the FCC adopted on December 15, 2004. The TRRO requires carriers to amend their interconnection agreements, to the extent necessary to implement the FCC's findings, within twelve months (or eighteen months with respect to the no-impairment findings for dark fiber loops and transport) from the March 11, 2005 effective date of the Order. See id. at ¶¶ 143, 196, 227. The FCC expects ILECs and CLECs to promptly implement the Commission's findings as directed by section 252 of the Act, and has asked state commissions to "ensure that parties do not engage in unnecessary delay." Id. at ¶ 233. Verizon's request included a proposed schedule. This request was being considered when the Joint Motion was filed.

Parties' Positions

Joint Movants argue that Verizon's proposed actions would constitute breach of the Joint CLECs' interconnection agreements in at least two respects: (1) by rejecting UNE-P orders that it is bound by the ICA to accept and process and (2) by refusing to comply with the change-of-law or intervening law procedures established by the ICAs.

In support of its Motion, Joint Movants attached the "Affidavit of Dayna Garvin," the designated contract notices manager for interconnection agreements between MCI's California local service entities and Verizon. Based on Garvin's interactions with MCI mass market business units, Garvin asserts that MCI will be adversely affected in its efforts to provide reasonably adequate service to its mass market customers if Verizon rejects request for new UNE-P orders beginning on March 11, 2005. Garvin asserts that Verizon's refusal to accept new orders will prevent MCI from obtaining new customers, and its refusal to access moves, adds and changes relating to the embedded base of existing customers will lead to inadequate service for those customers.

Joint Movants argue that the TRRO requires that its change-of-law provisions be implemented through modifications to the parties' ICAs. In this regard, the TRRO (¶ 233) requires that parties "implement the [FCC's] findings" by making "changes to their interconnection agreements consistent with our conclusions in this Order."

Thus, this requirement of the TRRO recognizes that some period of time may be necessary for parties to negotiate the appropriate changes to their interconnection agreements to conform to the change of law provisions.

Verizon opposes the Joint Motion in its entirety. Verizon argues that there is no basis for the Commission to prohibit Verizon from terminating its offering of new UNE-P arrangements effective March 11, 2005, since Verizon is merely complying with the requirements of the TRRO. Although the FCC adopted a 12-month transition period from the effective date of the TRRO, Verizon argues that this period only applies to the embedded customer base of existing UNE-P lines, citing TRRO ¶ 199.

Discussion

Parties' pleadings raise issues concerning the timing of implementation of the provisions of the TRRO relating to new UNE-P arrangements. Specifically, the question is whether the provisions of the TRRO regarding elimination of new UNE-P arrangements form a sufficient basis for Verizon to unilaterally implement the February 10, 2005 Verizon Notice on March 11, 2005, even though parties have not yet completed the process outlined in the ICA to negotiate appropriate amendments relating to applicable changes of law under the TRRO. As a basis for resolving the issues in the Joint Motion, the relevant authority is in the provisions of the TRRO and the provisions of the ICAs outlining the sequence of events to occur in order to implement applicable changes of law.

Applicability of Exceptions Under ¶ 227

The TRRO does, in fact, set different timetables for the embedded customer base versus new customers with respect to the transition period. The TRRO states: "The [12-month] transition period shall apply only to the embedded customer base, and *does not permit competitive LECs to add new UNE-P arrangements using unbundled access to local circuit switching pursuant to section 251(c)(3) except as otherwise specified in this Order*."(¶ 227).

Verizon interprets this language as prohibiting the CLECs from adding any new UNE-P arrangements after the effective date of the TRRO. Verizon views this prohibition as self-effectuating, and interprets the limiting clause "except as otherwise specified," as referring merely to carriers' option of voluntarily negotiating "alternative arrangements...for the continued provision of UNE-P," as referenced in ¶ 228.

By contrast, the Joint Movants interpret the clause "except as otherwise specified in this order," as referring to ¶ 233. Specifically, Joint Movants interpret ¶ 233 as entitling Joint CLECs to continue adding new UNE-P customers after March 11, 2005, until the current interconnection agreements are amended to prohibit it. Joint Movants also interpret the reference to "new UNE-P arrangements" to be limited to arrangements for new customers, not including subsequent changes or additions to UNE-P arrangements for existing UNE-P customers.

Parties thus disagree as to whether "new arrangements" refer only to new customers or also include modifications to service arrangements of the existing UNE-P customer base made after March 11, 2005 and whether the exception clause permits the continued provision of UNE-P to new and existing customers pending the development of a new ICA.

We will interpret ¶ 227 and the term "new arrangements" in light of the whole order.

First, we note that the FCC has clearly stated that "Incumbent LECs have *no* obligation to provide competitive LECs with unbundled access to mass market local circuit switching." (TRRO, ¶ 5, emphasis added) In addition, it is clear that the FCC desires an end to the UNE-P, for it states "... we exercise our "at a minimum" authority and conclude that the disincentives to investment posed by the availability of unbundled switching, in combination with unbundled loops and shared transport, *justify a nationwide bar on such unbundling*." (TRRO ¶ 204, emphasis added by italics.) Therefore, since there is no obligation and a national bar on the provision of UNE-P, we conclude that "new arrangements" refers to any new UNE-P arrangement, whether to provide service for new customers or to provide a new arrangement to existing services. The TRRO clearly bars both.

Other parts of the TRRO also support this interpretation. In particular, the FCC also states: "... we establish a transition plan to migrate *the embedded base of unbundled local circuit switching used to serve mass market customers to an alternative service arrangement*." (TRRO ¶207, emphasis added by italics, footnote omitted) Note that this last statement refers to "the embedded base of unbundled local circuit switching;" it does *not* refer to an "*embedded base of customers*." This statement suggests that there is a need only to transition those already having the UNE-P service, and that there is no need to transition customers who buy the UNE-P service over the next twelve months.

Even when the FCC discusses market disruption caused by the withdrawal of UNE-P service, the FCC limits its discussion to the taking away of service from customers who already possess UNE-P. Although the FCC notes in ¶226 that "eliminating unbundled access to incumbent LEC switching on a flash cut basis could substantially disrupt service to millions of mass market customers, as well as the business plans of competitors," this statement is contained in the section of the TRRO titled "Transition Plan." Thus, the FCC's concerns over the disruption to service caused by the withdrawal of UNE-P are focused on those customers undergoing a transition away from UNE-P. This statement does not indicate that the FCC believes that the failure to provide new UNE-P services to still more customers would be disruptive. Indeed, common sense indicates that it would more disruptive to provide a service to a new customer that would only be withdrawn in 12 months than to refrain from providing such a service that will be discontinued.

In summary, the only reasonable interpretation of the prohibition of "new service arrangements" is that this term embraces any to any arrangements to provide UNE-P services to any customer after March 11, 2005.

Concerning "the *except as otherwise specified in this Order*" exception contained in ¶ 227, we see that as referring to the need to negotiate serving arrangements, particular as to the customers undergoing transition or already holding service. In particular, the TRRO still contemplated a transitional process to pursue contract negotiations so that CLECs could continue to offer services to new customers and existing customers.

In particular, the TRRO also states:

> We expect that incumbent LECs and competing carriers will implement the Commission's findings as directed by section 252 of the Act. [footnote omitted] Thus, carriers must implement changes to their interconnection agreements consistent with our conclusions in this Order. [footnote omitted] We note that the failure of an incumbent LEC or a competitive LEC to negotiate in good faith under section 251(c)(1) of the Act and our implementing rules may subject that party to enforcement action. Thus, the incumbent LEC and competitive LEC must negotiate in good faith regarding any rates, terms, and conditions necessary to implement our rule changes. [footnote omitted] We

> expect that parties to the negotiating process will not unreasonably delay implementation of the conclusions adopted in this Order. *We encourage the state commissions to monitor this area closely to ensure that parties do not engage in unnecessary delay.* (TRRO, ¶ 233, emphasis added by italics)

This clearly indicates that the FCC did not contemplate that ILEC's would unilaterally dictate to CLECs the changes to their interconnection agreements necessary to implement the FCC's findings in the TRRO. Just as clearly, the California Commission was afforded an important role in the process by which ILECs and CLECs resolve their differences through good faith negotiations. Moreover, the Commission was encouraged by the FCC to monitor the implementation of the accessible letters issued by SBC to ensure that the parties do not engage in unnecessary delay.

The warning against unreasonable delay is meaningful only where a process for contract negotiation was contemplated to implement change of law provisions that could extend beyond March 11, 2005.

Thus, the centerpiece of the FCC's TRRO is the negotiation process envisioned to take place during the transition period. To date, there have been few negotiations between Verizon and the petitioners that would lead to interconnection agreement amendments that conform to the FCC's TRRO. Therefore, to afford the parties additional time to negotiate the applicable ICA amendments necessary to transition and to continue to serve the CLECS embedded customer base as contemplated by the TRRO, Verizon is directed to continue processing CLEC orders for the embedded base of customers, including additional UNE-Ps, until no later than May 1, 2005. Verizon is directed to not unilaterally impose those provisions of the accessible letter that involve the embedded customer base until the company has either negotiated and executed the applicable interconnection agreements with the involved CLECs or May 1, 2005 has been reached. During this negotiation window, all parties are instructed to negotiate in good faith interconnection agreement amendments to implement the FCC ordered changes. Commission staff is empowered to work with the parties to ensure that meaningful negotiations take place consistent with the FCC's directive to monitor the negotiation process to ensure that the parties do not engage in unnecessary delay.

In summary, we see three different situations and different implications of the TRRO:

1. For new CLEC customers seeking new serving arrangements, UNE-P is unavailable as of March 11, 2005.
2. For existing CLEC customers seeking new serving arrangements involving UNE-P, Verizon will process new orders for UNE-Ps while negotiations to modify the ICA's continue, but will do so only until May 1, 2005 at the latest.
3. During the transition period until March 11, 2006, absent a new ICA, ILECs must continue to maintain the existing serving arrangements involving UNE-P that CLEC customers currently have, but the TRRO has authorized ILECs to increase the price of UNE-P by $1.

Process for Implementing Applicable ICA Amendments for UNE-P Replacement

Since further ICA amendments are required, no party shall be permitted to use negotiations as a means of unreasonably delaying implementation of the TRRO or attempting to defeat the intent of the TRRO. The TRRO envisioned a limited period of negotiations, to be monitored by state commissions, after which the UNE-P prohibition against new arrangements would take effect.

The dispute resolution provisions of the MCI Agreement are contained in the General Terms and Conditions, §14. The pertinent provisions are:

> 14. Dispute Resolution
>
> 14.1 Except as otherwise provided in this Agreement, any dispute between the Parties regarding the interpretation or enforcement of this Agreement or any of its terms shall be addressed by good faith negotiation between the Parties. To initiate such negotiation, a Party must provide to the other Party written notice of the dispute, pursuant to Section 29 of the General Terms and Conditions, that includes both a detailed description of the dispute or alleged nonperformance and the name of an individual who will serve as the initiating Party's representative in the negotiation. The other Party shall have ten Business Days to designate its own representative in the negotiation. The Parties' representatives shall meet at least once within thirty (30) days after the date of the initiating Party's written notice in an attempt to reach a good faith resolution of the dispute. Upon agreement, the Parties' representatives may utilize other alternative dispute resolution procedures such as private mediation to assist in the negotiations.

> 14.2 If the Parties have been unable to resolve the dispute within thirty (30) days of the date of the initiating Party's written notice, either Party may pursue any remedies available to it under this Agreement, at law, in equity, or otherwise, including, but not limited to, instituting an appropriate proceeding before the Commission, the FCC, or a court of competent jurisdiction. In addition, the Parties may mutually agree to submit a dispute to resolution through arbitration before the American Arbitration Association; provided that, neither Party shall have any obligation to agree to such arbitration and either Party may in its sole discretion decline to agree to submit a dispute to such arbitration.

§29 of the General Terms and Conditions requires that the notice of a dispute be in writing and delivered to specified individuals. The Joint Movants contend that by ignoring these dispute resolution provisions, Verizon CA has breached the Agreement.

Thus, in accordance with these provisions of the ICA, parties are to first pursue "diligent efforts" to agree on appropriate modifications to the agreement. According to the Affidavit of Garvin, with reference to the Masoner letter in Exhibit 1 of the Joint Motion, Verizon did not engage in any negotiations with MCI regarding the subject matter of the February 10 Verizon Notice. Verizon replies that for more than two weeks after it advised CLECs that it would no longer accept new UNE-P orders after March 11, 2005, the CLECs did nothing. Garvin states that MCI wrote to Verizon on February 18, 2005, indicating that it considered the February 10 Notice to be an anticipatory breach of MCI's ICA, as well as a violation of the notice, change of law, and dispute resolution terms thereof. (Exhibit 1 of Joint Motion.)

In any event, parties' efforts have failed to produce agreement on the appropriate modifications to implement the change of law provision relating to the elimination of UNE-P. As noted above, Verizon remains obligated to continue offer new serving arrangements involving UNE-P for existing customers until no later than May 1, 2005 or until an agreement is reached As noted above, the FCC has also prescribed the basis for pricing of the embedded UNE-P base during the transition period as provided pursuant to Section 251 (c)(3). The pricing of new UNE-P arrangements added before May 1, 2005 should likewise apply the same transition pricing.

IT IS RULED that:

1. The Motions of Joint Movants and Small CLECs are hereby denied in part and granted in part in accordance with the terms and conditions outlined above.

2. Verizon shall continue to honor its obligations under the TRRO in accordance with the discussion outlined above.
3. Verizon has no obligation to process CLEC orders for UNE-P to serve new customers.
4. Parties are directed to proceed expeditiously with good faith negotiations toward amending the ICA in accordance with the TRRO.
5. If parties have not reached an agreement on the necessary amendments for new arrangements to serve new orders placed by existing CLEC customers, Verizon shall continue processing CLEC orders for UNE-Ps (for these existing customers) until no later than May 1, 2005.

Dated March 11, 2005 in San Francisco, California.

/s/ MICHAEL R. PEEVEY
MICHAEL R. PEEVEY
Assigned Commissioner

CERTIFICATE OF SERVICE

I certify that I have by mail, and by electronic mail, to the parties to which an electronic mail address has been provided, this day served a true copy of the original attached Assigned Commissioner's Ruling Granting in Part Motion for Emergency Order Granting Status Quo for UNE-P Orders on all parties of record in this proceeding or their attorneys of record.

Dated March 11, 2005, at San Francisco, California.

/s/ TERESITA C. GALLARDO
Teresita C. Gallardo

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

* *

The Commission's policy is to schedule hearings (meetings, workshops, etc.) in locations that are accessible to people with disabilities. To verify that a particular location is accessible, call: Calendar Clerk (415) 703-1203.

If specialized accommodations for the disabled are needed, e.g., sign language interpreters, those making the arrangements must call the Public Advisor at (415) 703-2074, TTY 1-866-836-7825 or (415) 703-5282 at least three working days in advance of the event.

EXHIBIT B

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking on the Commission's Own Motion into Competition for Local Exchange Service.	Rulemaking 95-04-043 (Filed April 26, 1995)
Order Instituting Investigation on the Commission's Own Motion into Competition for Local Exchange Service.	Investigation 95-04-044 (Filed April 26, 1995) **(FCC Triennial Review 9-Month Phase)**

ASSIGNED COMMISSIONER'S RULING DENYING IN PART AND GRANTING IN PART MOTIONS ON CONTINUATION OF UNBUNDLED NETWORK ELEMENT PLATFORM

Introduction

On March 1, 2005, a joint motion was filed by MCI, Inc., The Utility Reform Network (TURN), Blue Casa Communications, Inc. Wholesale Air-Time, Inc. Anew Communications Corp d/b/a Call America, TCAST Communications, and CF Communications LLC d/b/a Telekenex (Joint Movants). Each of the Joint Movants (except for TURN) are competitive local exchange carriers (CLECs) that have Interconnection Agreements (ICAs) with Pacific Bell Telephone Company (Pacific), by and through its parent company, SBC Communications (SBC). Each of the ICAs (patterned after the ICA between MCI and Pacific) provides that Pacific shall provision unbundled network elements (UNEs) in combinations, including the "UNE Platform (UNE-P).

The Joint Motion was filed in response to SBC's announcement that, beginning on March 11, 2005, it will reject all orders for new lines utilizing UNE-P and will also stop processing requests for moves, adds, and changes for each CLEC's existing UNE-P customer base. SBC will take this action pursuant to its interpretation of the legal effect of the Federal Communication Commission's (FCC) recently issued Triennial Review Remand Order (TRRO), released February 4, 2005.

Joint Movants seek a Commission order forbidding SBC from rejecting such UNE-P orders pending compliance with the change of law provisions in the respective ICAs. Joint Movants claim that affected CLECs will be unable to place UNE-P orders in California after March 10, 2005, unless this Commission takes affirmative action to forbid SBC from rejecting such UNE-P orders pending compliance with the change-of -law provisions in their respective interconnection agreements. Unless such Commission action is taken, Joint Movants claim that CLECs will sustain immediate and irreparable injury because they will be unable to fill service requests for existing and new UNE-P customers.

On March 2, 2005, DMR Communications and Navigator Telecommunications, LLC (collectively Small CLECs) filed a similar motion entitled "Motion for an Order Requiring SBC to Comply With Its CLEC Interconnection Agreements." The motion presents allegations and seeks relief essentially similar to that requested in the Motion filed in this same proceeding on March 1, 2005, by MCI, Inc. et. al. The DMR ICA is patterned after the AT&T ICA, except for its reciprocal compensation provisions. The Navigator ICA was approved in Resolution T-16524. Both the DMR and Navigator ICAs contain provisions for negotiation and dispute resolution for change of law provisions similar to those patterned after the MCI ICA.

Pursuant to the schedule set by the ALJ, replies in opposition to both motions were filed by SBC on March 4, 2005. A response in support of the joint motion was also filed by nni Communications, Ltd and California Catalog & Technology, Inc. d/b/a CCT Telecommunications, with supplemental concurrence by Blue Casa Communications, Inc. and Wholesale Air-Time. A response in support of the joint motion was also filed by Arrival Communications, Inc. A response was also filed by AT&T Communications of California, Inc., TCG Los Angeles, TCG San Diego and TCG San Francisco (AT&T), asking for the same relief for AT&T as may be granted to the Joint Movants and/or the Small CLECs.

The ALJ also specifically identified two questions to be addressed in parties' replies relating to ¶ 227 of the TRRO. The ALJ also authorized responses, filed on March 7, 2005, to the SBC reply limited to these two questions. In response to a March 7, 2005, email request, Joint Movants were granted leave to file a general third-round response on March 8, 2005.

Sequence of Events Leading to the Motion

On February 4, 2005, the FCC issued the TRRO, determining that the ILECs are not obligated to provide unbundled local switching pursuant to Section 251(c)(3) of the Federal Act. The effective date of the TRRO is March 11, 2005.

Regarding the required process for implementing the provisions of the TRRO regarding the availability of UNE-P, the FCC stated:

> **Mass Market Local Circuit Switching.** Incumbent LECs have *no* obligation to provide competitive LECs with unbundled access to

> mass market local circuit switching. We adopt a 12-month plan for competing carriers to transition away from use of unbundled mass market local circuit switching. This transition plan applies only to the embedded customer base, and does not permit competitive LECs to add new switching UNEs. During the transition period, competitive carriers will retain access to the UNE platform (*i.e.*, the combination of an unbundled loop, unbundled local circuit switching, and shared transport) at a rate equal to the higher of (1) the rate at which the requesting carrier leased that combination of elements on June 15, 2004, plus one dollar, or (2) the rate the state public utility commission stablishes, if any, between June 16, 2004, and the effective date of this Order, for this combination of elements, plus one dollar. (TRRO ¶ 5, emphasis added by italics)

In addition, the FCC also said,

> Further, regardless of any potential impairment that may still exist, we exercise our "at a minimum" authority and conclude that the disincentives to investment posed by the availability of unbundled switching, in combination with unbundled loops and shared transport, *justify a nationwide bar on such unbundling*. (TRRO ¶ 204, emphasis added by italics)

Concerning the embedded base of customers the FCC notes:

> Because unbundled local circuit switching will no longer be made available pursuant to section 251(c)(3), we establish a transition plan to migrate *the embedded base of unbundled local circuit switching used to serve mass market customers to an alternative service arrangement.* (TRRO ¶207, emphasis added by italics, footnote omitted)

The FCC adopted a transition plan that calls for CLECs to move their UNE-P embedded customer base to alternative service arrangements within 12 months of the effective date of the TRRO. The FCC also prescribed the basis for pricing during the transition period for unbundled switching provided pursuant to Section 251 (c)(3).

Finally, concerning the overall implementation of the order, the FCC states

> Given the need for prompt action, the requirements set forth here shall take effect on March 11, 2005, rather than 30 days after publication in the Federal Register. (TRRO ¶ 235.)

In addition, to implement the order, the TRRO states: "We expect that incumbent LECs and competing carriers will implement the Commission's findings as directed by Section 252 of the Act. [footnote omitted.] Thus, carriers must implement changes to their interconnection agreements consistent with our conclusions in this Order." (TRRO ¶ 233.)

SBC issued several "Accessible Letters" on February 11, 2005 (attached as Exhibit A to the Motion) in which SBC provided notification to CLECs concerning how it intended to modify its service offerings in response to the TRRO. The SBC Accessible Letters include a commercial offering described as "Interim UNE-P Replacement." In the Accessible Letter, SBC characterizes this offering as designed to be a bridge between March 11, 2005, i.e., the effective date of the TRRO, and when SBC and the CLEC are able to reach agreement on a long-term commercial agreement. Under this commercial offering, SBC would continue to provide the CLEC with the ability to acquire and provision new mass market local switch port with loop combinations, but at a new price to be unilaterally determined by SBC, and higher than the UNE-P prices currently paid under the Agreement.

Parties' Positions

Joint Movants argue that SBC's proposed actions would constitute breach of the Joint CLECs' interconnection agreements in at least two respects: (1) by rejecting UNE-P orders that it is bound by the ICA to accept and process and (2) by refusing to comply with the change-of-law or intervening law procedures established by the ICAs.

In support of its Motion, Joint Movants attached the "Affidavit of Kathy Jespersen," the designated contract notices manager for interconnection agreements between MCI's California local service entities and Pacific Bell. Based on her interactions with MCI mass market business units, Jespersen asserts that MCI will be adversely affected in its efforts to provide reasonably adequate service to its mass market customers if SBC rejects request for new UNE-P orders beginning on March 11, 2005. Jespersen asserts that SBC's refusal to accept new orders will prevent MCI from obtaining new customers, and its refusal to access moves, adds and changes relating to the embedded base of existing customers will lead to inadequate service for those customers.

Joint movants argue that the TRRO requires that its change-of-law provisions be implemented through modifications to the parties' ICAs. In this regard, as noted above, the TRRO (¶ 233) requires that parties "implement the [FCC's] findings" by making "changes to their interconnection agreements consistent with out conclusions in this Order." Thus, this requirement of the TRRO recognizes that some period of time may be necessary for parties to negotiate the appropriate changes to their interconnection agreements to conform to the change of law provisions.

In its response filed March 3, 2005, in support of the Motions, nni Communications pointed out that service to its 23,000 payphone customer lines depends on availability of the "Flex-ANI" switch feature that is used to identify calls as originating from payphones so that mandatory payphone compensation can be accounted and paid for by interexchange carriers. Yet, SBC refuses to continue providing nni Communications with this required feature even under a separate "commercial agreement."

SBC opposes the Joint Motion and the Small LEC Motion in their entirety. SBC argues that there is no basis for the Commission to prohibit SBC from terminating its offering of new UNE-P arrangements effective March 11, 2005, since SBC is merely complying with the requirements of the TRRO. Although the FCC adopted a 12-month transition period from the effective date of the TRRO, SBC argues that this period only applies to the embedded customer base of existing UNE-P lines. (TRRO ¶ 199)

Discussion

Parties' pleadings raise issues concerning the timing of the implementation of the provisions of the TRRO relating to new UNE-P arrangements. Specifically, the question is whether the provisions of the TRRO regarding elimination of new UNE-P arrangements form a sufficient basis for SBC to unilaterally implement its Accessible Letters on March 11, 2005, even though parties have not yet completed the process outlined in the ICA to negotiate appropriate amendments relating to applicable changes of law under the TRRO. As a basis for resolving the issues in the Joint Motion, the relevant authority is in the provisions of the TRRO and the provisions of the ICAs outlining the sequence of events to occur in order to implement applicable changes of law.

Applicability of Exceptions Under ¶ 227

The TRRO does, in fact, set different timetables for the embedded customer base versus new customers with respect to the transition period. The TRRO states: "The [12-month] transition period shall apply only to the embedded customer base, and *does not permit competitive LECs to add new UNE-P arrangements using unbundled access to local circuit switching pursuant to section 251(c)(3) except as otherwise specified in this Order.*" (¶ 227)

SBC interprets this language as prohibiting the CLECs from adding any new UNE-P arrangements after the effective date of the TRRO. SBC views this prohibition as self-effectuating, and interprets the limiting clause "except as otherwise specified," as referring merely to carriers' option of voluntarily negotiating "alternative arrangements…for the continued provision of UNE-P," as referenced in ¶ 228.

By contrast, the Joint Movants interpret the clause "except as otherwise specified in this order," as referring to ¶ 233. Specifically, Joint Movants interpret ¶ 233 as entitling Joint CLECs to continue adding new UNE-P customers after March 11, 2005, until the current interconnection agreements are amended to prohibit it. Joint Movants also interpret the reference to "new UNE-P arrangements" to be limited to arrangements for new customers, not including subsequent changes or additions to UNE-P arrangements for existing UNE-P customers.

Parties thus disagree as to whether "new arrangements" refer only to new customers or also include modifications to service arrangements of the existing UNE-P customer base made after March 11, 2005 and whether the exception clause permits the continued provision of UNE-P to new and existing customers pending the development of a new ICA.

We will interpret ¶ 227 and the term "new arrangements" in light of the whole order.

First, we note that the FCC has clearly stated that "Incumbent LECs have *no* obligation to provide competitive LECs with unbundled access to mass market local circuit switching." (TRRO, ¶ 5, emphasis added.) In addition, it is clear that the FCC desires an end to the UNE-P, for it states "… we exercise our "at a minimum" authority and conclude that the disincentives to investment posed by the availability of unbundled switching, in combination with unbundled loops and shared transport, *justify a nationwide bar on such unbundling*." (TRRO ¶ 204, emphasis added by italics.) Therefore, since there is no obligation and a national bar on the provision of UNE-P, we conclude that "new arrangements" refers to any new UNE-P arrangement, whether to provide service for new customers or to provide a new arrangement to existing services. The TRRO clearly bars both.

Other parts of the TRRO also support this interpretation. In particular, the FCC also states: ". . . we establish a transition plan to migrate *the embedded base of unbundled local circuit switching used to serve mass market customers to an alternative service arrangement*." (TRRO ¶207, emphasis added by italics, footnote omitted.) Note that this last statement refers to "the embedded base of unbundled local circuit switching;" it does *not* refer to an "*embedded base of customers*." This statement suggests that there is a need only to transition those already having the UNE-P service, and that there is no need to transition customers who buy the UNE-P service over the next twelve months.

Even when the FCC discusses market disruption caused by the withdrawal of UNE-P service, the FCC limits its discussion to the taking away of service from customers who already possess UNE-P. Although the FCC notes in ¶ 226 that "eliminating unbundled access to incumbent LEC switching on a flash cut basis could substantially disrupt service to millions of mass market customers, as well as the business plans of competitors," this statement is contained in the section of the TRRO titled "Transition Plan." Thus, the FCC's concerns over the disruption to service caused by the withdrawal of UNE-P are focused on those customers undergoing a transition away from UNE-P. This statement does not indicate that the FCC believes that the failure to provide new UNE-P services to still more customers would be disruptive. Indeed, common sense indicates that it would more disruptive to provide a service to a new customer that would only be withdrawn in 12 months than to refrain from providing such a service that will be discontinued.

In summary, the only reasonable interpretation of the prohibition of "new service arrangements" is that this term embraces any arrangements to provide UNE-P services to any customer after March 11, 2005. However, the order did establish an exception process to this blanket bar.

Concerning "the *except as otherwise specified in this Order*" exception contained in ¶ 227, we see that as referring to the need to negotiate serving arrangements, particular as to the customers undergoing transition or already holding UNE-P services. In particular, the TRRO still contemplated a transitional process to pursue contract negotiations so that CLECs could continue to offer services to new customers and existing customers.

In particular, the TRRO also states:

> We expect that incumbent LECs and competing carriers will implement the Commission's findings as directed by section 252 of the Act. [footnote omitted] Thus, carriers must implement changes to their interconnection agreements consistent with our conclusions in this Order. [footnote omitted] We note that the failure of an incumbent LEC or a competitive LEC to negotiate in good faith under section 251(c)(1) of the Act and our implementing rules may subject that party to enforcement action. Thus, the incumbent LEC and competitive LEC must negotiate in good faith regarding any rates, terms, and conditions necessary to implement our rule changes. [footnote omitted] We expect that parties to the negotiating process will not unreasonably delay implementation of the conclusions adopted in this Order. We encourage the state commissions to monitor this area closely to ensure that parties do not engage in unnecessary delay. (TRRO, ¶ 233, emphasis added by italics.)

This clearly indicates that the FCC did not contemplate that ILEC's would unilaterally dictate to CLECs the changes to their interconnection agreements necessary to implement the FCC's findings in the TRRO. Just as clearly, the California Commission was afforded an important role in the process by which ILECs and CLECs resolve their differences through good faith negotiations. Moreover, the Commission was encouraged by the FCC to monitor the implementation of the accessible letters issued by SBC to ensure that the parties do not engage in unnecessary delay.

The warning against unreasonable delay is meaningful only where a process for contract negotiation was contemplated to implement change of law provisions that could extend beyond March 11, 2005. The remedy against unreasonable delay is not to circumvent the negotiation process by unilateral implementation of the ILEC's Accessible Letters on March 11, 2005.

Thus, the centerpiece of the FCC's TRRO is the negotiation process envisioned to take place during the transition period. To date, there have been few negotiations between SBC and the petitioners that would lead to interconnection agreement amendments that conform to the FCC's TRRO. Therefore, to afford the parties additional time to negotiate the applicable ICA amendments necessary to transition and to continue to serve the CLECS embedded customer base as contemplated by the TRRO, SBC is directed to continue processing CLEC orders involving additional UNE-Ps for the embedded base of customers who already have UNE-Ps, until no later than May 1, 2005. SCB is directed to not unilaterally impose those provisions of the accessible letter that involve the embedded customer base until the company has either negotiated and executed the applicable interconnection agreements with the involved CLECs or May 1, 2005 has been reached. During this negotiation window, all parties are instructed to negotiate in good faith interconnection agreement amendments to implement the FCC ordered changes. Commission staff is empowered to work with the parties to ensure that meaningful negotiations take place consistent with the FCC's directive to monitor the negotiation process to ensure that the parties do not engage in unnecessary delay.

In summary, we see three different situations and different implications of the TRRO:

1. For new CLEC customers seeking new serving arrangements, UNE-P is unavailable as of March 11, 2005. Therefore, the accessible letter may take effect at that time.

2. For existing CLEC customers already receiving UNE-P services that seek new serving arrangements involving UNE-P, SBC will process new orders for UNE-Ps while negotiations to modify the ICA's continue, but will do so only until May 1, 2005 at the latest.

3. During the transition period until March 11, 2006, absent a new ICA, ILECs must continue to maintain the existing serving arrangements involving UNE-P that CLEC customers currently have, but the TRRO has authorized ILECs to increase the price of UNE-P by $1.

Process for Implementing Applicable ICA Amendments for UNE-P Replacement

Since further ICA amendments are required, no party shall be permitted to use negotiations as a means of unreasonably delaying implementation of the TRRO or attempting to defeat the intent of the TRRO. The TRRO envisioned a limited period of negotiations, to be monitored by state commissions, after which the UNE-P prohibition against new arrangements would take effect.

Section 29.18 of the ICA between SBC and MCI under the Appendix "General Terms and Conditions" sets forth the process and sequence of events whereby changes of law are implemented.

> 29.18 Intervening Law
>
> ... If the actions of ...regulatory agencies of competent jurisdiction invalidate, modify, or stay the enforcement of laws or regulations that were the basis or rationale for a provision of the contract, the affected provision shall be invalidated, modified or stayed, consistent with the action of the regulatory body. In the event of any such action, the Parties *shall expend diligent efforts to arrive at an agreement respecting the appropriate modifications to the Agreement. If negotiations fail,* disputes between the Parties concerning the interpretation of the actions required or provisions affected by such governmental actions *shall be resolved pursuant to the dispute resolution process provided for in this Agreement....* (emphasis added).

The process for dispute resolution is set forth in Section 29.13 "Alternative to Litigation" of the ICA.

Thus, in accordance with these provisions of the ICA, parties are to first pursue "diligent efforts" to agree on appropriate modifications to the agreement. According to the Affidavit of Jespersen, SBC did not engage in any negotiations with MCI regarding the subject matter of the February 11th Accessible Letters. SBC replies that for more than two weeks after it advised CLECs that it would no longer accept new UNE-P orders after March 11, 2005, the CLECs "did nothing." Jespersen states, however, that MCI wrote to SBC on February 18, 2005, indicating that it considered the February 11th Accessible Letters to be an anticipatory breach of MCI's ICA, as well as a violation of the notice, change of law, and dispute resolution terms thereof.

In any event, parties' efforts have failed to produce agreement on the appropriate modifications to implement the change of law provision relating to the elimination of UNE-P. As noted above, SBC remains obligated to continue to offer new serving arrangements involving UNE-P for existing customers already holding UNE-P services until no later than May 1, 2005 or until an agreement is reached As noted above, the FCC has also prescribed the basis for pricing of the embedded UNE-P base during the transition period as provided pursuant to Section 251 (c)(3). The pricing of new UNE-P arrangements added before May 1, 2005 should likewise apply the same transition pricing.

IT IS RULED that:

1. The Motions of Joint Movants and Small CLECs are hereby denied in part and granted in part in accordance with the terms and conditions outlined above.
2. SBC shall continue to honor its obligations under the TRRO in accordance with the discussion outlined above.
3. SBC has no obligation to process CLEC orders for UNE-P to serve new customers.
4. Parties are directed to proceed expeditiously with good faith negotiations toward amending the ICA in accordance with the TRRO.
5. If parties have not reached an agreement on the necessary amendments for new arrangements to serve new orders placed by existing CLEC customers,

SBC shall continue processing CLEC orders for UNE-Ps (for these existing customers) already holding UNE-P services until no later than May 1, 2005.

Dated March 11, 2005 in San Francisco, California.

/s/ SUSAN P. KENNEDY by TJS
Susan P. Kennedy
Assigned Commissioner

CERTIFICATE OF SERVICE

I certify that I have served by electronic mail to the parties for whom an electronic mail address has been provided, this day and by U.S. Mail on Monday, March 14, 2005, served a true copy of the original attached Assigned Commissioner's Ruling Denying in Part and Granting in Part Motions on Continuation of Unbundled Network Element Platform on all parties of record in this proceeding or their attorneys of record.

Dated March 11, 2005, at San Francisco, California.

/s/ ELIZABETH LEWIS
Elizabeth Lewis

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

* *

The Commission's policy is to schedule hearings (meetings, workshops, etc.) in locations that are accessible to people with disabilities. To verify that a particular location is accessible, call: Calendar Clerk (415) 703-1203.

If specialized accommodations for the disabled are needed, e.g., sign language interpreters, those making the arrangements must call the Public Advisor at (415) 703-2074, TTY 1-866-836-7825 or (415) 703-5282 at least three working days in advance of the event.

EXHIBIT C

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 2002-682

VERIZON-MAINE
Proposed Schedules, Terms, Conditions and Rates for Unbundled Network Elements and Interconnection (PUC 20) and Resold Services (PUC 21)

March 17, 2005

ORDER

WELCH, Chairman; DIAMOND and REISHUS, Commissioners

I. SUMMARY

In this Order, we deny MCImetro Access Transmission Services LLC's (MCI) Petition for Emergency Declaratory Relief and the CLEC Coalition's[1] Motion for Temporary Order. We also remind Verizon of its obligation to follow federal law concerning certification of wire centers for purposes of ordering certain loop and transport unbundled network elements (UNEs). Finally, we put Verizon on notice that we may pursue the imposition of penalties for any failure to comply with our September 3, 2004 Order in this Docket, which requires Verizon to include all of its wholesale offerings in its wholesale tariff, including UNEs provided pursuant to section 271 of the Telecommunications Act of 1996 (TelAct), and to continue provisioning 271 UNEs at "Total Element Long Run Incremental Cost (TELRIC)" rates until we, or the Federal Communications Commission (FCC), approve new rates.

II. BACKGROUND

On February 4, 2005, the FCC issued its *Triennial Review Order Remand Order (TRRO)*.[2] In the *TRRO*, the FCC eliminated certain unbundling requirements pursuant to section 251 of the TelAct and established new criteria for access to certain loop and transport UNEs. *TRRO* at ¶ 5. The effective date of the *TRRO* is March 11, 2005. On February 10, 2005, in a letter posted on its website (UNE Industry Letter), Verizon announced that on March 11, 2005, it would stop accepting orders for those UNEs which the FCC had de-listed in the *TRRO*.

On March 2, 2005, MCI filed a Petition for Emergency Declaratory Relief (Petition), asserting the need for injunctive relief to prevent Verizon from rejecting orders for de-listed UNEs, including UNE-Ps. In MCI's view, Verizon is obligated to provide

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[1] A coalition comprised of Mid-Maine Communications, Oxford Networks and Pine Tree Network.

[2] *Triennial Review Remand Order, Unbundled Access to Network Elements Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers ("TRRO")*, FCC Docket Nos. 04-313, 01-338 *Order on Remand*, FCC 04-290, issued Feb. 4, 2005, effective Mar. 11, 2005.

access to the de-listed UNEs pursuant to the September 2, 1997 Interconnection Agreement between MCI and Verizon and, by announcing its intent to stop accepting orders for such UNEs on March 11, 2005, Verizon is in anticipatory breach of the agreement.

On March 2, 2005, Verizon issued a second Industry Letter (Wire Center Industry Letter) attaching a list of rate centers it asserted met the FCC's new business line/fiber collocator criteria related to submission of orders for DS1 and DS3 loops and transport. Verizon further stated that by issuing its letter it was placing CLECs "on notice of the Wire Center classifications" thereby providing them with "actual or constructive knowledge" of the wire center classification. Finally, Verizon informed CLECs that if they should "attempt to submit an order for any of the aforementioned network elements notwithstanding your actual or constructive knowledge . . . Verizon will treat each such order as a separate act of bad faith carried out in violation of federal regulations and a breach of your interconnection agreements, and will pursue any and all remedies available to it."

On March 4, 2005, the CLEC Coalition joined in MCI's request by filing a Motion for Temporary Order (Motion). On March 7, 2005, A.R.C. Networks Inc. d/b/a InfoHighway Communications Corporation (InfoHighway) filed a Petition to Intervene and Comments in Support of MCI's Petition.[3]

Verizon responded to MCI's Petition by filing opposition papers on March 8, 2005, (Ver. Opp.) arguing that the FCC's *TRRO* takes precedence over any provisions of the Interconnection Agreement that are contrary to it. Verizon also claims that we lack the authority to provide the relief sought by MCI's Petition.

On March 10, 2005, MCI withdrew its Petition, explaining that it had entered into an interim commercial agreement for UNE-P replacement services. Later that same day, the CLEC Coalition filed a letter-brief in which it addressed Verizon's response to the MCI Petition, and urged that its own request for injunctive relief be granted despite the fact that the party first seeking such relief (MCI) had withdrawn its request. Finally, in a series of e-mail messages sent on March 10 and 11, 2005, Verizon, the CLEC Coalition, and InfoHighway described the rulings of several regulatory agencies in other states that have recently confronted the same issues raised by the MCI Petition.

A special deliberative session was held on March 11, 2005, to consider the pending motions.

[3] We grant InfoHighway's petition to intervene.

III. POSITIONS OF THE PARTIES

A. The CLECs

According to the CLECs,[4] Verizon's obligation to provide UNEs derives from their interconnection agreements with Verizon. The *TRRO* triggered the so-called "change of law" provisions in the interconnection agreements – provisions which require the parties to "arrive at mutually acceptable modifications or cancellations," of the interconnection agreement whenever such changes are "required by a regulatory authority or court in the exercise of its lawful jurisdiction." In the view of the CLECs, Verizon cannot unilaterally impose its understanding of what the *TRRO* requires. Instead, the parties must negotiate changes to the interconnection agreement in light of the *TRRO*. Injunctive relief is necessary to prevent Verizon from implementing its plan to discontinue the provision of certain UNEs, as described in Verizon's February 10, 2005, Industry Letter, and thereby disrupting the status quo during the negotiation period.

The CLECs also argue that while the *TRRO* removes certain UNEs from the list of those which must be offered pursuant to section 251(c)(3) of the TelAct, it has no bearing on Verizon's separate and continuing obligation to provide those UNEs pursuant to section 271 of the TelAct. Thus, the CLECs request that we enforce our September 3, 2004 Order requiring Verizon to meet its commitment to us in our 271 Proceeding[5] to file a wholesale tariff and to continue to provide 271 UNEs at TELRIC rates until the wholesale tariff is approved.

B. Verizon

Verizon takes issue with the CLECs' characterization of the "change of law" provisions of the interconnection agreements. According to Verizon, those provisions are meant merely to ensure that the language of interconnection agreements is updated to reflect new rules issued by the FCC – rules that Verizon insists are binding on the parties as soon as they are pronounced. The request for emergency injunctive relief is misguided, claims Verizon, because the *TRRO* changed the status quo, effective March 11, 2005, and subsequent changes to interconnection agreements will serve only to acknowledge the new state of affairs.

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[4] The CLEC Coalition and InfoHighway explicitly adopted the arguments of MCI before MCI withdrew its Petition, and also articulated their own arguments. For the purposes of this Order, we will treat the arguments of these parties collectively as those of the "CLECs."

[5] *Inquiry Regarding the Entry of Verizon-Maine into the InterLATA Telephone Market Pursuant to Section 271 of the Telecommunications Act of 1996*, Docket No. 2000-849.

Verizon also claims that its obligation to provide UNEs, as memorialized in the interconnection agreements, derives solely from section 251 of the TelAct, and "not state law, section 271, or anything else." Verizon Opp. at 4. Even if section 271 did form the basis for such obligations, Verizon adds, the Commission is powerless to act because the FCC is "solely responsible for interpretation and enforcement of any section 271 obligations." *Id.* Thus, Verizon contends not only that we should deny the petitions for emergency injunctive relief but also that we lack the authority, under concepts of federal preemption, to impose the relief sought by the CLECs and enforce our September 3, 2004 Order.

IV. DECISION

A. Implementation of the *TRRO*

We have considered the arguments of all parties, the language of the *TRRO*, decisions reached by other state commissions, and the practical implications of our decision. We find that the FCC intended that its new rules de-listing certain UNEs be implemented immediately rather than be the subject of interconnection agreement amendment negotiations before becoming effective. We further find that it is in the best interests of all parties to implement the changes required by the *TRRO* immediately and move forward on the pending litigation of other contested issues. The decisions set forth in the *TRRO* come after years of seemingly endless litigation involving the FCC and federal courts; delaying the implementation of the new rules will only delay the inevitable.

As a practical matter, it is not obvious to us what issues would remain to be negotiated concerning the section 251 UNEs de-listed by the FCC; the FCC has been clear that these UNEs are no longer required to be unbundled under section 251. The end result after going through the step of amending the interconnection agreements will be the same as enforcing the March 11th deadline immediately, *albeit* with some delay. We recognize that there may be other provisions in the *TRRO* which require negotiations before the interconnection agreements can be amended. We encourage parties to move forward swiftly with those negotiations and stand ready to address any disputes that may be brought before us.

In addition, we reject the reasoning of the Georgia Public Service Commission in its March 8, 2005 Order (Docket No. 19341-U) regarding the applicability of the *Mobile Sierra*[6] doctrine because the contracts at issue here contain change of law provisions and therefore already contemplate regulatory changes. Further, the Georgia PSC seems to be saying that, without a showing of heightened public interest, the FCC cannot unilaterally override an interconnection agreement but can, without a showing of

[6] The *Mobile Sierra* doctrine allows the government to modify the terms of a private contract upon a finding that such modification will serve the public need. *United States Gas Pipeline Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956); *Fed. Power Comm'n v. Sierra Pac. Power Co.*, 350 U.S. 348 (1956).

heightened public interest, order parties to amend their agreements to be consistent with the FCC's new rules. We do not find this distinction persuasive.

Finally, as Verizon correctly noted, the FCC stated repeatedly throughout its Order that ILECs would have no obligation to provide CLECs with access to the de-listed UNEs and that the transition plan does not permit CLECs to add new de-listed UNEs. We find the FCC's specificity regarding these issues to be clear and thus, we do not believe it to be appropriate or necessary to ascribe anything but their plain meaning to the FCC's directives. Accordingly, we deny the requests of MCI and the CLEC Coalition for an order staying implementation of the FCC's rules pending interconnection agreement negotiations.

B. Self-Certification of Wire Centers

As stated above, the FCC's new rules place limitations on a CLEC's ability to order certain loops and transport UNEs, depending upon the number of business lines and/or fiber collocators associated with the particular wire center in which it would like to purchase the UNE. The FCC, however, clearly found that CLECs, after a diligent inquiry, could self-certify that a particular wire center does not meet the FCC's criteria. *TRRO* at ¶ 234. Further, upon submission of an order involving self-certification, an ILEC must provision the order first and then dispute the classification of the wire center in front of a state commission pursuant to the dispute resolution procedures of most interconnection agreements. *Id.*

While the March 2, 2005 Industry Letter posted by Verizon on its website does not explicitly state that it will not follow the FCC's rules, i.e. that it will reject a CLEC order involving a rate center contained on Verizon's list, it comes very close. Indeed, apart from appearing unnecessarily hostile, the language is inconsistent with the spirit of the *TRRO* and with the specific findings in paragraph 234. Thus, we remind Verizon of its obligation to comply with the FCC's rules and paragraph 234 of the *TRRO*. We also remind CLECs that they must make a good faith inquiry concerning the characteristics of any wire center that might be implicated by the FCC's criteria. If necessary, we will investigate the factual underpinnings of Verizon and/or CLEC assertions concerning the characteristics of wire centers in Maine which may meet the FCC's criteria.

C. Enforcement of Verizon's 271 Obligations

Having resolved the motions pending before us, we need go no further. Nonetheless, prompted by certain comments made by Verizon in its Brief in Opposition to the motions, we remind Verizon of its continuing obligation to comply with both the standing orders of this Commission, including our Order of September 3, 2004, and section 271 of the TelAct. The following discussion is intended to summarize, but not in any way to supplant or modify, our findings of September 3, 2004. In our view, this summary is sufficient to put Verizon on notice that any failure on its part to comply with our September 3rd Order may lead to the imposition of penalties pursuant to 35-A M.R.S.A. § 1508-A.

On September 3, 2004, we issued an order in this proceeding requiring Verizon to include all of its wholesale offerings in its state wholesale tariff, including UNEs provided pursuant to section 271 of the TelAct. We further specified that Verizon must file prices for all offerings contained in the wholesale tariff for our review for compliance with federal pricing standards, i.e. TELRIC for section 251 UNEs and "just and reasonable" rates pursuant to sections 201 and 202 of the Communications Act of 1934 for section 271 UNEs. Finally, we held that Verizon must continue to provision 271 UNEs at TELRIC prices pending approval of the wholesale tariff and/or new rates. Verizon did not seek reconsideration of the Order nor did it appeal the Order pursuant to 35-A M.R.S.A. § 1320.

Now, some six months after we issued our Order, Verizon asserts that the Order has no force and that Verizon has no obligation to comply with its requirements. We find Verizon's assertions both troubling and procedurally improper. Unless and until a Commission order is amended, vacated, or otherwise modified pursuant to the requirements of Title 35-A or other applicable law, the order retains the force of law and must be obeyed. Accordingly, our September 3, 2004 Order in this proceeding stands and Verizon must comply with it or risk being found in contempt of a Commission order and subject to the fining provisions of 35-A M.R.S.A. § 1508-A. Verizon remains free, as it has been since September 3rd, to request that the Commission alter or amend its September 3rd Order. It is not free, however, to unilaterally determine that it does not have to comply.

We take very seriously the commitments Verizon made to us during our 271 proceeding and expect that Verizon will honor those commitments. We will not repeat the reasoning and rationale supporting our assertion of jurisdiction to enforce Verizon's 271 commitments. We laid that reasoning out quite clearly in our September 3rd Order and find that there has been no intervening change in law that would impact our analysis.[7]

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[7]The cases cited by Verizon can, and have been, distinguished. First, in both *Verizon North Inc. v. Strand*, 309 F.3d 935 (6th Cir. 2002) and *Wisconsin Bell, Inc. v. Bie*, 340 F.3d 441 (7th Cir. 2003), the state commissions ordered the incumbent local exchange carrier (ILEC) to file a state wholesale tariff pursuant to state authority, which is entirely different from Verizon voluntarily agreeing to file a wholesale tariff in exchange for this Commission's support of its federal 271 application. Further, this Commission has never stated that the wholesale tariff would replace the obligation of parties to enter into interconnection agreements. Second, *Indiana Bell Telephone Company, Inc. v. Indiana Utility Regulatory Commission*, 359 F.3d 493 (7th Cir. 2004), involved a state commission's assertion of authority to order a performance assurance remedy plan under state law. Again, this is clearly distinguishable from the situation here in Maine where Verizon agreed to file a wholesale tariff.

Verizon has had over six months since our September 3rd Order to submit a tariff for its 271 obligations and/or obtain FCC approval of the specific rates it intends to charge for 271 UNEs. Verizon has taken no action. Thus, the interim provisions that we put in place, i.e. the requirement that Verizon continue to provision 271 UNEs at TELRIC rates until other rates are approved, continues to govern. To the extent that there is legitimate disagreement concerning which UNEs qualify as 271 UNEs, we encourage the parties to bring those issues to us as soon as possible. We note that the Hearing Examiner in this proceeding recently issued a procedural order with an attached matrix outlining the status of all UNEs and requesting legal argument from the parties concerning their correct categorization. Thus, we expect that in the absence of particular disagreements, we will have an opportunity to resolve the issue of which UNEs are considered 271 UNEs within the next couple of months.

A decision by Verizon to ignore the requirements of our September 3rd Order may trigger application 35-A M.S.A. §1508-A. Indeed, to the extent that Verizon fails to comply with the September 3rd Order by refusing to provision uncontested 271 UNEs, such as unbundled switching, on the grounds that our September 3rd Order is not enforceable, it is suspect to an enforcement proceeding pursuant to 35-A M.R.S.A. §1508-A(1)(B). If Verizon refuses to provision a 271 UNE based on a good faith disagreement concerning whether the UNE qualifies as a 271 UNE, we will conduct a proceeding to determine whether the UNE qualifies. If Verizon continues to refuse to provision the UNE after we find that it does qualify, it risks the initiation of enforcement and penalty proceedings.

Dated at Augusta, Maine, this 17th day of March, 2005.

BY ORDER OF THE COMMISSION

Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: Welch
Diamond
Reishus

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.

2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within **21 days** of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320(1)-(4) and the Maine Rules of Appellate Procedure.

3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320(5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.

EXHIBIT D

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN

MCIMETRO ACCESS TRANSMISSION SERVICES LLC,	)	
Plaintiff,	)	Civil Action No. 05-70885
v.	)	Hon. Arthur J. Tarnow
MICHIGAN BELL TELEPHONE COMPANY, d/b/a SBC MICHIGAN,	)	Magistrate Judge Pepe
Defendant.	)	

ORDER OF DISMISSAL AND
DISSOLUTION OF PRELIMINARY INJUNCTION

This matter is before the Court on the parties' Stipulation of Dismissal and for Dissolution of Preliminary Injunction, and the Court having reviewed the stipulation, it is:

1. ORDERED AND ADJUDGED, that this matter be and hereby is DISMISSED, and that
2. The Preliminary Injunction issued by the Court on March 11, 2005 be and hereby is DISSOLVED as moot.

IT IS SO ORDERED this 15th Day of March, 2005.

Arthur J. Tarnow
United States District Judge

EXHIBIT E

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
New York on March 16, 2005

COMMISSIONERS PRESENT:

William M. Flynn, Chairman
Thomas J. Dunleavy
Leonard A. Weiss
Neal N. Galvin

CASE 05-C-0203 – Ordinary Tariff Filing of Verizon New York Inc. to Comply with the FCC'S Triennial Review Order on Remand.

ORDER IMPLEMENTING TRRO CHANGES

(Issued and Effective March 16, 2005)

BY THE COMMISSION:

INTRODUCTION

On February 10, 2005, Verizon New York Inc. (Verizon) filed proposed revisions to its P.S.C. No. 10 – Communications tariff. The changes, designed to implement the Federal Communications Commission's (FCC) Triennial Review Order on Remand (TRRO),[1] allow Verizon to discontinue providing various unbundled network elements and establish transition periods and price structures for existing services. Additionally, these tariff revisions incorporate previous Verizon commitments regarding

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[1] In the Matter of Unbundled Access to Network Elements, Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, WC Docket No. 04-313, CC Docket No. 01-338, Order on Remand, 2005 FCC Lexis 912 (released February 4, 2005) (TRRO). This action stems from the D.C. Circuit's March 2, 2004 decision which remanded and vacated several components of the FCC's earlier Triennial Review Order.

unbundled network switching which were made to the Commission in the April 5, 1998 Pre-Filing Statement of Bell Atlantic- New York in Case 97-C-0271 (PFS) in connection with Verizon's application to the FCC for relief from restrictions on providing long distance services. The tariff changes had an effective date of March 12, 2005. Inasmuch as they were not suspended, they are now in effect.

The TRRO addressed several impairment standards: mass market local circuit switching, DS1, DS3, and dark fiber transport, and high-capacity loops. Mass market local switching, and therefore the unbundled network element platform (UNE-P), was eliminated as a network element with no prospective obligation by ILECs to provide new UNE-P arrangements to competitive local exchange carriers (CLECs). In addition, a transition period for migration of CLECs' embedded customer base to new arrangements was established. During the transition period, the price for existing UNE-P lines would rise to TELRIC plus one dollar or the state commission approved rate as of June 16, 2004, plus one dollar, whichever was higher. In addition, the FCC found that CLECs are impaired without unbundled access to DS1 loops unless there are four or more fiber-based collocators and at least 60,000 business lines in the wire center. CLECs are impaired without unbundled access to DS3 loops unless there are four or more fiber-based collocators and at least 38,000 business lines in the wire center. Finally, CLECs are impaired without unbundled access to DS1 transport, except on routes connecting a pair of wire centers that both contain at least four fiber-based collocators or at least 38,000 business lines. The impairment standard for DS3 and dark fiber transport between wire centers was at least three fiber-based collocators or at least 24,000 business access lines. Transition periods were set for CLECs losing unbundled access to DS1 and DS3 and dark fiber transport and loops. The FCC also found no impairment as to dark fiber loops.

In addition to the tariff filing, on February 10, 2005, Verizon posted an industry notice on its website informing CLECs of its planned TRRO implementation and advising CLECs that no orders for new facilities or arrangements delisted as unbundled network elements by the FCC would be processed on or after March 11, 2005. CLECs without alternative arrangements in place before March 11, 2005 would pay transitional rate increases allowed by the FCC for existing lines for delisted network elements. Verizon also offered an interim UNE-P replacement services agreement and, in its tariff, described below, committed to continue providing UNE-P in Zone 2 in New York pursuant to the PFS.

On February 25, 2005, comments were filed on the revised tariff, and related matters, by a coalition of CLECs: Allegiance of New York; A.R.C. Networks Inc. d/b/a InfoHighway Communications Corporation; BridgeCom International, Inc.; Broadview Network, Inc.; Trinsic Communications, Inc.; and XO New York, Inc. (Joint CLECs). A petition for emergency declaratory relief was filed on February 28, 2005 by MCI Metro Access Transmission Services (MCI Petition), which was subsequently withdrawn on March 10, 2005.[2] Comments on the tariff filing were also filed by Conversent Communications of New York, LLC (Conversent) on March 2, 2005. Verizon filed reply comments in support of its tariff on March 8, 2005. Additionally, on March 9, 2005, Covad Communications Company and IDT America Corp. (Covad) filed joint comments in support of the MCI Petition, as did AT&T Communications of New York, Inc., Teleport Communications Group, Inc., TC Systems, Inc., Teleport Communications New York, and ACC Corp. (AT&T).[3] Finally, on March 9, 2005, the Joint CLECs filed a Response to the Verizon Reply.

In this order we review the proposed tariff changes and filed comments. We first consider the tariff changes themselves and conclude that several modifications

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[2] Although MCI withdrew its petition for emergency declaratory relief, Covad and IDT America filed comments in support of that petition on March 9, 2005. Therefore, the issues raised in the MCI Petition will be considered.

[3] The Joint CLECs filed their comments in Case 04-C-0420 and MCI filed its comments in Case 04-C-0314. AT&T and Covad filed in support of the MCI Petition. As all comments deal, in pertinent part, with the tariff filing at issue in this case, the comments have been construed as also being filed in Case 05-C-0203.

are required. Apart from those modifications, we believe the tariff properly implements the TRRO. We also consider issues raised as to whether Verizon's tariff properly implements the PFS, and conclude that it does. Finally, we consider how the tariff changes affect Interconnection Agreements.[4]

TARIFF FILING

Local Switching and UNE-Platform Service

The TRRO allows for the phase-out of local circuit switching as an Unbundled Network Element (UNE) required to be provided by incumbent local exchange carriers. Thus, UNE-Platform service (UNE-P)[5] would no longer be available. Verizon's tariff revisions give CLECs one year (until March 11, 2006) to transition existing UNE-P customers to their own facilities or make other arrangements for local circuit switching. CLECs will pay the state approved Total Element Long Run Incremental Cost (TELRIC) rate as of June 15, 2004 plus one dollar. However, Verizon will continue to provide UNE-P arrangements to CLECs through December 21, 2007 in Zone 2 wire centers pursuant to the PFS.[6] New orders for UNE-P service will be accepted through December 21, 2005 for these wire centers only. After March 11, 2006, the rate for service in Zone 2 wire centers will transition to Verizon's applicable resale rate.

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4 Although issues were raised regarding state unbundling authority and the effect of the Merger Order, we decline to deal with them in this tariff proceeding designed to implement the TRRO.

5 UNE-P is a combination of network elements that includes local circuit switching, a switch port, and a subscriber loop.

6 Zone 2 wire centers are those located in less densely populated areas and are identified in Appendix A to P.S.C. No. 10 – Network Elements tariff. The provision of local circuit switching in these wire centers is still subject to the FCC's four line carve out rule, which allowed Verizon to discontinue switching service for four lines and above (at a single customer location) from certain central offices in New York City.

Pricing proposal for Zone 2

Verizon's tariff provides that the PFS transitional pricing for Zone 2 wire centers will be in effect until March 10, 2006. During the interval of March 11, 2006 to December 21, 2007, the tariff indicates the price will be increased over time to rates equivalent to resale rates. However, no proposal for incremental price increases has been submitted. To ensure sufficient clarity exists for this transition, Verizon is required to file its proposal for price increases to resale rates for the Zone 2 wire centers by April 30, 2005.

Adding features

Joint CLECs object to Verizon's tariff on the grounds that it does not allow CLECs to submit feature change orders for their embedded UNE-P customers. Verizon responds that it does not object to making such changes, for as long as it is required to continue to maintain embedded platform arrangements. Verizon also published this clarification in "TRRO UNE-P Mass Market Discontinued Facilities Frequently Asked Questions" posted on its website. Thus, since the tariff does not preclude feature changes, no tariff revision is required.

Four Line Carve Out

Under the Triennial Review Order (TRO)[7], the FCC permitted ILECs to discontinue providing UNE-P for business customers with four or more lines (four line carve-out customers) or enterprise switching customers (those with local circuit switching

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[7] Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket Nos. 01-338, 96-98, 98-146, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, 18 FCC Rcd 16978, ¶497 (footnotes omitted) (2003) ("TRO"); Errata, 18 FCC Rcd 19020 (2003), vacated and remanded in part, affirmed in part, United States Telecom Ass'n v. FCC, 359 F.3d 554 (D.C. Cir. 2004), cert. denied 125 S.Ct. 313, 316, 345 (2004).

at DS1 and higher capacity levels). Last year, Verizon filed tariff revisions indicating its intent to bill for those services in a limited number of central offices at resale rates via a surcharge on tariffed TELRIC rates. However, Verizon chose not to file the rate for that surcharge for inclusion in its tariffs. Although the Commission is investigating whether the surcharge should be tariffed, it has permitted Verizon to depart from TELRIC pricing.

The Joint CLECs assert that because Verizon has not withdrawn its tariff for UNE-P service at TELRIC rates, enterprise switching and four line carve out customers are included in the embedded base of customers as of the date the TRRO was issued. Thus, the Joint CLECs argue that under the TRRO, CLECs are entitled to ongoing provision of this service until March 2006 at TELRIC plus $1, irrespective of the provisions of the earlier TRO order.

Verizon responds that switching for enterprise and four line carve out customers was eliminated as a UNE by the FCC, the courts and this Commission prior to the effective date of the TRRO. Tariff provisions were allowed to go into effect that removed the obligation to provide this UNE.

The FCC permitted ILECs to discontinue providing local circuit switching to enterprise and four line carve out customers at TELRIC rates. In Case 04-C-0861, the Commission is investigating the process by which Verizon revised its rates for a limited number of enterprise and four line carve out customers by imposing a surcharge without filing the rate in its tariff. While the process that Verizon utilized is under review, that does not require us to frustrate the clear goal of the FCC to remove the obligation to provide such services at TELRIC rates. Thus, the Joint CLECs argument is rejected.

<u>DS1 and DS3 Loops and Transport</u>

With respect to dedicated transport, Verizon's tariff provides that DS1 (24 voice channels per line) dedicated transport will no longer be available as a UNE at TELRIC prices where the connected wire centers (building where Verizon terminates the local wire loop) both have at least four fiber collocators or at least 38,000 business access lines. Additionally, DS3 (672 voice channels per line) and "dark fiber" (fiber that has been lit by the CLEC using its own electronics, rather than the incumbent) transport will no longer be available as a UNE where the wire centers have at least three fiber collocators or at least 24,000 business lines. CLECs have until March 11, 2006 to transition existing lines from DS1 and DS3 dedicated transport, and until August 11, 2006 to transition from dark fiber transport. During the transition CLECs will pay 115% of the state approved TELRIC rate available on June 15, 2004.

Verizon's tariff provides that DS1 high-capacity local loops will no longer be available as a UNE at TELRIC prices where the local area is served by a wire center having at least 60,000 business lines and at least four fiber collocators. DS3 loops will no longer be available as a UNE where the wire center serving area (the area of a local exchange served by a single wire center) has at least 38,000 business lines and at least four fiber collocators. Dark fiber loops will no longer be available as a UNE, irrespective of the number of lines and collocators in the wire center. CLECs have until March 11, 2006 to transition from DS1 and DS3 UNE loops and until September 11, 2006 to transition from dark fiber UNE loops. During the transition CLECs will have to pay 115% of the state approved TELRIC rate available on June 15, 2004.

Negative construction

The Joint CLECs submitted specific objections to the language in Verizon's tariff revisions with respect to DS1 and DS3 loops and transport. For example, it took issue with language that identified when Verizon was not obligated to provide unbundled access to DS1 loops. The FCC rules were written in the affirmative, thus the CLECs argue that Verizon's tariffs should also be written in the affirmative to "define the rights of the CLEC that continue to obtain access to loops and transport". (Joint CLECs at p. 25.) Because the tariffs are written in the negative, identifying the circumstances under which Verizon is not obligated to provide various elements, the Joint CLECs contend that the CLECs' entitlement is left unclear.

Verizon's tariff identifies its obligations under the TRRO to provide UNEs in light of the applicable restrictions established by the FCC. That Verizon chose to state the obligation in the negative does not prejudice the CLECs. The CLECs failed to indicate any specific obligation for providing DS1 and DS3 loops and transport that the tariff would allow Verizon to evade. Verizon's tariff reasonably reflects the obligations set forth in the TRRO.

Certification of ineligible wire centers

Under the FCC's TRRO, CLECs are required to determine whether they can continue to place orders for loop or transport UNEs at TELRIC. Verizon has filed lists with the FCC that designate which wire centers meet the various criteria identified in the TRRO in order for CLECs to determine which dedicated transport and high –capacity loops will remain eligible as UNEs. Verizon's tariff requires CLECs, prior to submitting a request for UNE services, to review the lists in making their determinations as to whether the wire centers involved meet the applicable criteria for continued UNE eligibility. In the event an order is submitted for a location not eligible for the requested UNE (dedicated transport or high–capacity loop), the tariff provides that Verizon will institute the applicable dispute resolution process.[8] Under most of the interconnection agreements currently in effect, it is anticipated those disputes would be submitted to this Commission for resolution.

Conversent objects because Verizon does not include the list of wire centers for UNEs which are still available in the tariff. They contend that this does not meet the requirements of Public Service Law '92, which requires filing rates, charges,

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8 The TRRO makes clear that an ILEC challenging a UNE request "must provision the UNE and subsequently bring any dispute regarding access to the UNE before a state commission or other appropriate authority". Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, CC Docket No. 01-338, Order on Remand 2005 FCC Lexis 912, ¶234 (issued February 4, 2005).

terms, and conditions of the services Verizon provides. Additionally, the Joint CLECs contend that the list of ineligible wire centers that Verizon filed with the FCC must be vetted by the applicable regulatory authority and that Verizon must demonstrate changes in facts prior to amending such lists.

Verizon's response contends that Public Service Law does not preclude references to information available elsewhere and that it was not required to include the list of wire centers not qualifying for UNEs in its tariff. It analogizes to methods and procedures, as well as business rules, which CLECs are able to obtain via Verizon's website.

To ensure adequate notice and process, we will direct Verizon to file the list of exempt wire centers as part of its tariff. Under the TRRO, once a wire center is determined to be a Tier 1 wire center and thus exempt from provision of DS1 service as a UNE, that wire center is not subject to reclassification as a Tier 2 or Tier 3 wire center in order to make DS1 UNEs available at a later date. This permanent classification calls for the review and approval process inherent in tariffing. Also, wire centers can be added to the list or upgraded to a different classification. Without the official records provided through tariffing, effective dates could be questioned. If the affected wire centers are included in the tariff, then there will be specific effective dates that can be used in order to resolve disputes that are allowed under the TRRO. These could result in true-ups that can be done more efficiently with "bright line" effective dates.

Verizon will be required to amend its tariff to include the list of wire centers which no longer qualify for certain UNEs. The supporting documentation also should be provided to Staff for review and analysis.[9] Verizon, of course, can request confidential treatment under the Commission's rule. Any subsequent changes to the list

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[9] Documentation includes but is not limited to the number of business lines under the FCC's ARMIS reports and wire center inspection results.

should also be provided to the Commission via tariff filings with supporting documentation.

The Joint CLECs argue that the revised tariff provides Verizon a conclusive right to determine whether to fill a CLEC order for service, which goes beyond the FCC's order. It contends that the FCC clearly instructed CLECs to perform due diligence before submitting an order for service, but that the CLEC can weigh all evidence including that which contradicts Verizon's list of exempt wire centers.

Verizon contends that the issue is not whether it will process an order submitted by a CLEC, but whether a CLEC can submit an order in bad faith for a wire center that does not meet the objective criteria established in the TRRO. Verizon notes that it has made the lists publicly available and requested that any errors be brought to its attention.

We do not agree with the Joint CLECs' assessment regarding an ILEC's responsibility to provide access to a UNE when the order is submitted by a CLEC. A CLEC will not be considered to have performed its due diligence if it submits an order for a wire center that is on the Commission approved tariff list of exempt wire centers. Thus, we will not require a tariff amendment requiring Verizon to process orders that clearly conflict with the approved tariff list of exempt wire centers.

Backbilling

The Joint CLECs object to the tariff provision that, in the event the applicable dispute resolution process found a CLEC was not entitled to a UNE at a specific location, would allow Verizon to backbill for such service. The CLEC would be billed from the provision date of the service for the difference in price between the UNE rate and the rate that would otherwise be charged for the use of such element. The Joint CLECs contend that the TRRO does not provide for such backbilling and the applicable rate is not set forth in the tariff.

Verizon responds that backbilling would only be implemented after the appropriate dispute resolution process has found the CLEC was not entitled to UNE rates in the wire center. It notes that the rate would be the applicable charge for a non-UNE equivalent for the transport or loop facility ordered.

The CLECs are correct that the TRRO does not speak to the ability of ILECs to bill for the foregone charges when a CLEC mistakenly requests access to a UNE in an ineligible rate center. However, the TRRO does not prohibit such a provision. Without such backbilling, there is little incentive for a CLEC to refrain from placing orders in an ineligible rate center. It is reasonable for Verizon to assert its right to backbill for services for which it would otherwise be entitled to charge a higher price. However, it is expected that backbilling can be mostly avoided by having Verizon's list of exempt wire centers vetted through the tariff process.

Post-transition arrangements

Verizon's tariff requires CLECs to place orders for conversion or discontinuance of UNEs in sufficient time according to applicable intervals. These intervals are referenced in the Carrier-to-Carrier guidelines that are available to all CLECs, and links to the appropriate information were provided in Verizon's January 6, 2005 compliance filing in Case 97-C-0139.

The CLECs argue that Verizon's tariff burdens CLECs in requiring them to place orders to transition services from UNEs early enough to ensure that orders can be fulfilled by the end of the FCC mandated transition periods. It contends more appropriate language would require Verizon to process orders placed for discontinuance or conversion of UNEs within the transition period and to continue TELRIC rates if Verizon is unable to fully process the order before the end of the applicable transition period. The CLECs also argue for grooming plans and efficient processes for conversions to be developed under interconnection agreements.

Verizon's response notes that its tariff prevents CLECs from extending the TRRO mandated transition periods. It points out that the tariff provides that if an order is placed with the applicable provisioning intervals, the service will not be disconnected.

The FCC set a transition period for all the tasks, both CLEC and ILEC, necessary for an orderly transition to be completed.[10] The TRRO does not allow a carrier placing an order one day before the end of the transition period to continue to get TELRIC pricing for the service because the ILEC was unable to process the order. The grooming plans and efficient processes for conversions under interconnection agreements recommended by the CLECs are not precluded by Verizon's tariff. However, if an order were placed for conversion of the service prior to the end of the transition period, but not within the applicable provisioning interval, requiring Verizon to continue to provide the service at resale rates would seem a reasonable alternative to disconnection. If no order is placed within the transition period, disconnection, as set forth in the tariff, is reasonable. Therefore, Verizon is directed to amend its tariff to allow for conversion to analogous service at the applicable resale rate in the event an order for conversion is placed before the end of the FCC mandated transition period, even if the order cannot be completed within the transition period. This is analogous to the conversion process for interoffice transmission facilities under an earlier Triennial Review Order that Verizon proposed in Case 03-C-1442.

Dark fiber loops

The Joint CLECs submit that Verizon's tariff should be amended to recognize Verizon's obligation to perform network modifications to provision DS1 and DS3 loops to include activating dark fiber strands under the same circumstances that Verizon would perform the work for its customers.

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[10] TRRO,¶¶142-145, 195 -198.

The Commission's February 9, 2005 order in Cases 04-C-0314 and 04-C-0318 directing Verizon to perform routine network modifications is sufficient to address this concern. In that order the Commission refrained from providing an exhaustive list of work that falls within the parameters of routine network modifications. Verizon is already on notice that it must perform such work for CLECs if it does so for its own customers. Thus, the Joint CLECs' contentions are not persuasive.

DS1 transport caps

The Joint CLECs and Conversent contend that Verizon's tariff unfairly restricts the number of DS1 circuits to 10 unbundled DS1 loops. They cite the TRRO provision that indicates that the 10-loop cap is only applicable where the FCC found non-impairment for DS3 transport.[11] Verizon responds that the TRRO and its attached regulation are inconsistent. We read the TRRO as a whole as intending to apply the 10-loop cap only where the FCC found non-impairment for DS3 transport. That is the most logical and reasonable interpretation of the FCC's action. Verizon is directed to modify its tariff accordingly.

Conclusion

The changes Verizon has made to its tariff implement the FCC's designated transition periods and price structures for dedicated transport, high capacity loops, and local circuit switching. In addition, Verizon has incorporated the additional commitments it made to the Commission to provide unbundled local circuit switching in the PFS, which go beyond the requirements of the TRRO. The proposed tariff revisions are reasonable and customers have been notified. Therefore, the tariff revisions listed on Appendix A should continue in effect. Verizon is directed to amend its tariff to allow for conversion of DS1 and DS3 loop and transport services to analogous services at the applicable resale rate in the event an order for conversion is placed before the end of the

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[11] TRRO, ¶ 128.

FCC mandated transition period, even if the order cannot be completed within the transition period. Further, Verizon should amend its tariff to include the list of wire centers which no longer qualify for certain UNEs. The supporting documentation also should be provided to Staff for review and analysis. Verizon should amend its tariff concerning the 10-loop cap for DS1 services. Lastly, Verizon is required to file by April 30, 2005 its proposal for price increases to resale rates for the Zone 2 wire centers.

PRE-FILING STATEMENT

Background and Comments

On April 6, 1998, in connection with its application to provide in-region long distance service, Bell Atlantic-New York (hereinafter Verizon), made additional commitments to the Commission, beyond those required by section 271, to ensure competition in New York.[12] With respect to combining network elements, Verizon committed to offer UNE-P for specified duration periods and "until such methods for permitting competitive LECs to recombine elements are demonstrated to the Commission. This commitment, when met, will permit competing carriers to purchase from Bell Atlantic-New York and connect all of the pieces of the network necessary to provide local exchange service to their customers."[13] In order to define methods available to CLECs to combine elements, the Commission instituted a proceeding.[14]

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[12] The major areas addressed were: (1) combining network elements; (2) terms and conditions enabling CLECs to connect their facilities to Verizon's; (3) testing Verizon's Operations Support Services (OSS) for pre-order, ordering, billing, customer migration, order changes, and maintenance and repair performance; and, (4) establishing an incentive system to maintain competition and service performance.

[13] Case 98-C-0690, Combining Unbundled Elements, Order Initiating Proceeding (issued May 6, 1998).

[14] Id.

Joint CLECs maintain that Verizon's Pre-filing Statement (PFS) imposes additional UNE-P provisioning obligations on Verizon in New York despite the TRRO's discontinuation of Verizon's section 251 obligations regarding UNE-P. Joint CLECs assert that the TRRO tariff filing does not reflect those PFS obligations which Joint CLECs maintain consist of providing UNE-P at TELRIC or cost-based rates until December 22, 2005 in Zone 2 and during a 2-year transition at a Commission approved increased price once the Commission finds that two conditions have been met: (1) assembly or a reasonable process enabling CLECs to combine unbundled loops; and, (2) a seamless and ubiquitous hot cut process. According to Joint CLECs, if the Commission found that both conditions had been met before December 22, 2003 in Zone 1 and December 22, 2005 in Zone 2, then the two-year transition for Zone 1 would end on December 22, 2005 and on December 22, 2007 for Zone 2. However, they claim the assembly and hot cut pre-transition conditions have not been met and, therefore, Verizon must continue to provide UNE-P at cost-based TELRIC rates in New York pursuant to the terms of the PFS.

In addition, Joint CLECs contend that the PFS requires Verizon to accept orders for new UNE-P lines after March 11, 2005 and until the two-year transition has ended. The TELRIC plus $1 dollar tariffed rate violates the terms of the PFS, according Joint CLECs, because it is not a Commission approved transitional rate.

The MCI Petition states that irreparable harm will occur if new UNE-P orders are not provisioned after March 10, 2005, and that the PFS requires Verizon to provide UNE-P in New York regardless of Verizon's federal obligations. The MCI Petition asserts that Verizon has not met the assembly condition, and therefore, the two-year transition has not begun. The MCI Petition further asserts that this failure was acknowledged by the Commission in Case 98-C-0690 when the Commission found "that only in conjunction with the continued provision of UNE combinations by Verizon pursuant to the Pre-filing Statement did Verizon provide recombination methods sufficient to support foreseeable competitive demand."

Verizon maintains that its TRRO tariff filing regarding PFS terms and rates is consistent with its PFS obligations. Verizon, the Joint CLECs and MCI agree that the PFS duration period for Zone 1 ended on December 21, 2003 and will end December 21, 2005 for Zone 2. However, Verizon contends that the transition period for each zone began automatically after the duration period ended, while Joint CLECs state that the beginning of the PFS transition period is contingent upon a Commission determination that two preconditions, assembly and hot cuts, have been fulfilled. As authority for a transition automatic start, Verizon cites a Commission Notice Requesting Comments in Case 04-C-0420 which describes Verizon's continuing obligation to provide UNE-P beyond the duration period: "[a]t the end of the duration period Verizon committed to continue the availability of the platform for an additional two years, albeit at a price that would increase to substantially the cost of resold lines."

Verizon asserts that no new customers may be added once the duration period has ended, that the PFS silence regarding new platform obligations, combined with fulfillment of the hot cut and assembly conditions, precludes any interpretation except that the transition period was intended to provide time for CLECs to find alternative arrangements for existing UNE-P customers.

As to meeting the PFS assembly and hot cut conditions, Verizon maintains that it has met both conditions and that Commission certification of that satisfaction, effected by a formal approval process, is not required by the PFS. According to Verizon, it has amply demonstrated the performance of both conditions to the Commission's satisfaction.

The price for new and existing UNE-P arrangements in Zone 2 is set at TELRIC plus one dollar during the remainder of that PFS duration period. Verizon states this FCC transition price is consistent with PFS obligations because the PFS requires UNE rates set by the Commission in accordance with federal law. According to Verizon, TELRIC plus one dollar is the price for UNE-P after March 11, 2005 until March 11, 2006.

Compliance With Assembly Condition

In Opinion 98-18,[15] the Commission examined Verizon's Pre-filing Statement combination obligations. The Commission concluded that "[a]fter exhaustive analysis of the strengths and shortcomings of these options [referring to methods CLECs could use to recombine elements themselves], consideration of competitors' proposals, and collaboration, we are requiring the provision of every technically feasible method available today. These methods, with certain modifications, are sufficient to support foreseeable competitive demand in a reasonable and non-discriminatory manner, in conjunction with its provision of element combinations pursuant to the Pre-Filing."[16] Verizon subsequently implemented its Assembly Products in tariffs, which were approved. Opinion No. 98-18 and Verizon's Assembly Products tariff were designed to permit CLECs to assemble or combine a Verizon loop and Verizon port (i.e., switch). Although the Commission's finding in Opinion No. 98-18 recognized that the assembly options would be offered in conjunction with the UNE platform, we find no reason to conclude that Verizon's assembly offerings would not continue to enable carriers to combine the Verizon link and port themselves. We also note the availability of commercial agreements for UNE-P replacement services for new UNE-P customers.[17]

In their March 9 Response, the Joint CLECs claim that Verizon has no functioning method that enable CLECs to combine a Verizon loop with a Verizon port as required by the PFS. The Joint CLECs claim that Verizon's assembly product focuses on combining a Verizon loop with a CLEC switch, not a Verizon switch. Such allegations

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[15] Opinion No. 98-18, Opinion and Order Concerning Methods for Network Element Recombination (issued November 23, 1998).

[16] Id. at 3.

[17] For example, see MCI's March 10, 2005 letter withdrawing its Petition for Emergency Declaratory Relief.

were made in the Joint CLEC original filing and accompanied by an offer of affidavits to demonstrate the alleged lack of assembly. The Joint CLECs did not, however, supply facts upon which we could conclude that Verizon does not provide a functioning method of assembly. In view of Opinion No. 98-18, which examined methods by which Verizon would combine Verizon loops and Verizon ports, and the Verizon Assembly Products tariff, which has been in effect since January 2001, conclusory contrary statements by the Joint CLECs are simply not adequate to demonstrate that Verizon has failed to provide a product that CLECs may or may not demand.

Compliance With Hot Cut Condition

Joint CLECs suggest that compliance with the PFS hot cut condition might be premised upon Commission review of Verizon's hot cut processes in Case 02-C-1425 with a concomitant transition date coinciding with issuance of the Order in August 2004. Verizon states that Commission review of hot cut processes in Case 02-C-1425 was just one determination regarding the efficacy of the hot cut process. In 2002, the Commission reviewed Verizon's hot cut process and concluded that the process was effective and "well-refined."[18] In addition, Verizon indicates Carrier-to-Carrier metrics demonstrate high levels of performance regarding Verizon's hot cut process[19] and ISO 9000 certification demonstrating conformance with best practices.[20]

We conclude that Verizon has had, since the end of the Zone 1 duration period in December 2003, a reasonable hot cut process. The loop migration process has performed well and has met our metrics. We find Verizon has met its PFS commitment for hot cuts.

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[18] Case 02-C-1425, Order Instituting Proceeding (issued November 22, 2002).

[19] See monthly C2C reports in Case 97-C-0139.

[20] Case 02-C-1425 Hearing Record, Tr. 53-55.

Demonstrated compliance with the assembly and hot cut conditions resolves the issue of Commission certification that the standards have been met and the timing of the transition period in Zones 1 and 2. Therefore, the two-year transition period in Zone 1 will end on December 21, 2005 and the two-year transition period in Zone 2 will end on December 21, 2007.

Transition Availability of UNE-P for New Customers

Joint CLECs maintain that the PFS' silence regarding availability of UNE-P for new customers during the two-year transition argues for an interpretation allowing CLECs to order new UNE-P arrangements while transitioning from the platform. Verizon maintains that the same silence precludes such interpretation.

There is no express term in the PFS authorizing CLECs to order new UNE-P services during the transition period. To imply such a term is unreasonable given the context and language of the PFS and that the transition period was intended to facilitate a smooth process for migrating existing UNE-P customers from the Verizon provided regulated platform. Adding customers while that transition is underway could undermine efforts for that smooth and seamless transition. Therefore, new UNE-P arrangements will not be available in Zone 1 pursuant to the PFS where the transition period ends on December 21, 2005 and will not be available in Zone 2 once the transition period begins on December 22, 2005.

Joint CLECs point out in their March 9 Response that Verizon's argument that the PFS doesn't apply to new customers during the two year PFS transition period is inconsistent not only with the PFS but with Verizon's own interpretation of the PFS. They note that in April 2004, in response to the Commission's March 29, 2004 Notice in Case 04-C-0420 (March 29 Notice) in connection with the USTA II vacatur of the FCC's Triennial Review Order, Verizon stated that the PFS transition charge for UNE-P should be implemented as a separate rate element to be applied to any new or existing UNE-P arrangement.

The key issue raised by the March 29 Notice was the establishment of a surcharge and not the more refined point of whether new customers would be served after the expiration of the duration period. This plus the fact that the surcharge levels being considered in the March 29 Notice were higher than the FCC's $1 UNE-P surcharge, lead us to conclude that Verizon's April 2004 statement expresses a willingness to offer a higher rate for new customers, but is not a definitive statement concerning the scope of the PFS. Moreover, in its April 2004 pleading Verizon points to other PFS language indicating that its suppression of access charge billing will continue for *existing platforms after the expiration of the availability of new platforms.* This language more directly supports the distinction between the broad UNE-P commitment during the duration period and the more limited (i.e., existing customers only) commitment during the two year transition period following the duration period.[21]

In short, the PFS both expressly obligates Verizon to provide UNE-P for the four and six year duration periods[22] and describes the transition period as the period after the expiration of the availability of new platforms.[23] For all the reasons set forth above we reject the Joint CLECs' interpretation.

Transition Pricing

Zone 2

Joint CLECs claim that they are entitled to TELRIC or cost-based pricing in Zone 2 through December 21, 2005, the duration period for that zone. Verizon points to the fact that the Zone 2 duration period and FCC transition period run concurrently until December 21, 2005 and that the PFS transition period for Zone 2 runs concurrently with the FCC transition period after December 21, 2005 until March 11, 2006. Verizon

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[21] Even if the Joint CLECs' view of the scope of the PFS obligation were accepted, because the TRRO eliminated Verizon's obligation to provide new UNE-P arrangements, they would not be entitled to the FCC surcharge (TELRIC plus $1) for new UNE-P customers.

[22] Pre-filing Statement pp. 8-9.

[23] Id. at p. 8.

has filed a proposed FCC TRRO transition rate of TELRIC plus $1. After the FCC UNE-P transition ends on March 11, 2006, the price for UNE-P arrangements will increase to resale rates by December 21, 2007, the end of the transition period for Zone 2. This increase in price during the transition is consistent with the PFS.

Contrary to Joint CLECs' claim, the PFS does not entitle CLECs to TELRIC rates. No PFS citation has been offered to support the contention that UNE-P under the PFS can only be priced at TELRIC rates. When the PFS was filed in April 1998, the FCC's TELRIC rule was not in effect because it had been overturned by the 8th Circuit. We find that the $1 increase during the remainder of the duration period in Zone 2 is reasonable.

Zone 1

The two-year transition period in Zone 1 ends on December 21, 2005 and runs concurrently with the FCC transition period, which begins on March 11, 2005. Verizon, therefore, will apply the FCC TRRO transition rate of TELRIC plus $1 during that period and through the entire FCC transition period, rather than a higher PFS rate. After the FCC UNE-P transition ends, any remaining UNE-P arrangements will be discontinued or converted to alternative arrangements. Verizon's proposed increase in price during the Zone 1 transition is consistent with the PFS, which specifies that increases in transition rates are subject to Commission approval. The increased rate for the remainder of the transition period in Zone 1, TELRIC plus $1, is reasonable.

SECTION 271

Covad and IDT America maintain that Verizon has an obligation to continue providing access to UNE-P, apart from TRRO determinations, and cite 47 U.S.C. section 271 as authority. Although they admit that the FCC declined to require combining network elements no longer impaired pursuant to 47 U.S.C section 251, the MCI Petition contends that 47 U.S.C. section 202's nondiscrimination provisions provide a basis for combining non-impaired network elements since allowing only Verizon to offer customers bundled switching would discriminate against CLECs. Joint CLECs also contend that Verizon's section 271 obligations remain despite the FCC's non-impairment findings and that it is essential that the PFS assembly condition be met in order to combine network elements.

In addition to jurisdictional arguments, Verizon cites the TRRO provision in which the FCC "declined to require BOCs, pursuant to section 271, to combine network elements that are no longer required to be unbundled under section 251.[24]

Given the FCC's decision to not require BOCs to combine 271 elements no longer required to be unbundled under section 251, it seems clear that there is no federal right to 271-based UNE-P arrangements.

INTERCONNECTION AGREEMENTS

Comments

Joint CLECs assert that specific provisions in their Interconnection Agreements regarding change of law and/or material change, which require bilateral negotiation, prohibit Verizon from unilaterally amending those Interconnection Agreements through its proposed tariff filing. In addition, Joint CLECs argue that the FCC's TRRO directs that changes should be implemented through the Interconnection Agreement amendment process and that Verizon's tariff filing is not a substitute for that process.

The MCI Petition states that Interconnection Agreements with Verizon cannot be abrogated by Verizon's unilateral tariff filing. Specifically, MCI states that until its Interconnection Agreement with Verizon is amended, Verizon must continue to provide UNE-P at cost based prices. The MCI Petition points to a prior instance in which Verizon sought to immediately discontinue providing services no longer required by the FCC, i.e. enterprise switching and four-line carve-out, in which Verizon acknowledged

[24] TRO ¶ 655, n. 1990.

that it had an obligation to follow change of law provisions in the MCI/Verizon Interconnection Agreement rather than summarily suspend provisioning of the service.

Conversent states that the TRO calls for implementing FCC required changes through the 47 U.S.C. Section 252 arbitration process and the TRRO mirrors that implementation and transition plan by also directing negotiated change. By precluding negotiation of key issues, e.g. wire centers where high-capacity loops and dedicated transport will or will not be provided, Conversent claims that Verizon's TRRO tariff filing usurps the process called for by the FCC in the TRRO.

AT&T contends that the specific change of law language in its Interconnection Agreements with Verizon preserves the status quo as to TRRO implementation until the Interconnection Agreements are amended. Similarly, Covad cites a section of its Interconnection Agreement that requires parties to negotiate changes in law which are then not effective unless executed in writing. According to IDT, its Interconnection Agreement specifies that regulatory and judicial changes must be negotiated and the status quo maintained during the pending negotiations. These provisions preclude Verizon from withdrawing network elements previously required pursuant to section 251, according to Covad and IDT.

Verizon states that the TRRO's directives take effect on March 11, 2005 and Interconnection Agreement terms "cannot override an FCC directive." The 12-month conversion process for UNE-P customers outlined in the TRRO, applies only to existing, not new customers, according to Verizon. Therefore, the FCC's decision to delist UNEs and specify that the transition period applies to embedded customers only expressly prohibits CLECs from ordering new UNE-arrangements after March 11, 2005.

In addition, Verizon argues that the FCC's intent to immediately effect discontinuation of certain UNEs is evidenced by the March 11, 2005 expiration date, of the FCC's Interim Rules Order, which imposed a temporary obligation to provide UNEs, and the effective date of the TRRO, which relieves Verizon and other ILECs of any obligation to provide certain UNEs, also March 11, 2005.

Verizon counters MCI's argument that the TRRO allows CLECs to order new UNE-P service until changes are made to existing Interconnection Agreements by pointing to the express prohibition in the TRRO against adding new UNE-P customers and the FCC's finding that continuing new UNE-P arrangements would "seriously undermine infrastructure investment and hinder the development of genuine facilities-based competition."[25]

Verizon states that it is not violating change of law provisions nor unilaterally amending Interconnection Agreements by filing its TRRO tariff because the change of law provisions invoked require compliance in the first instance with effective law, followed by a negotiation process to conform Interconnection Agreements. In addition, applicable law provisions in Verizon/CLEC Interconnection Agreements direct the CLECs to follow applicable law. In this instance, according to Verizon, applicable law eliminates its obligation to provide new UNE-P arrangements on or after March 11, 2005.

Discussion

The issue presented is whether our approval of the Verizon tariff and the clear statements of the TRRO regarding new customers for delisted UNEs satisfy or override change of law provisions in Interconnection Agreements regarding entitlement to ordering and receiving new network elements delisted in the TRRO, including UNE-P arrangements, after March 11, 2005.

The TRRO, in ¶233, makes reference to a negotiated process for implementing changes. Based on this language the TRRO should be implemented through interconnection agreements as necessary. However, for CLECs that have interconnection agreements with provisions allowing such amendment via tariff changes, changes will be effected via the tariff change process. The AT&T/Verizon

[25] TRRO ¶ 218.

Interconnection Agreement, for example, incorporates tariffs and envisions that tariff changes may flow through to the interconnection agreement.[26] In view of the notice provided by the tariff filing, the comment process thereon, and our review of both the tariff and comments, we find that this change process properly balances CLECs' interest in avoiding unilateral changes and the FCC's and Verizon's interest in avoiding unnecessary delay in implementing the TRRO's clear mandates. Therefore, the Commission declines to invoke its authority to prevent the tariff changes from flowing through to interconnection agreements, where provided for by interconnection agreements.

Further, to the extent other interconnection agreements do not incorporate tariff terms for UNE offerings and where changes must first be negotiated, we find that the change of law provision in those agreements should be followed to incorporate the transition pricing on delisted elements for the embedded base. Because the terms of the transition are clearly specified in the TRRO, this process should not be complex.[27] Moreover, to be consistent with the TRRO, the amendment should provide for a true-up to the TRRO transition rate for the embedded base of customers back to March 11, 2005, the effective date of the TRRO.[28]

Finally, with regard to new customers and interconnection agreements, based on our careful review of the TRRO, we conclude that the FCC does not intend that

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[26] See Case 01-C-0095, Joint Petition of AT&T Company of New York Inc., TCG New York, Inc. and ACC Telecom Corp. Pursuant to Section 252(b) of the Telecommunications Act of 1996 for Arbitration to Establish an Interconnection Agreement with Verizon New York Inc., Order Resolving Arbitration Issues (issued July 30, 2001) p. 8. Many of the CLECs that have filed comments in this proceeding have opted into the ATT/Verizon interconnection agreement.

[27] The FCC made clear that the UNE-P price should be increased by $1 and loops and transport in affected wire centers should be increased to 115% for the transition period.

[28] TRRO n. 408, n. 524, n. 630.

new UNE-P customers can be added during the transition period as the TRRO "does not permit competitive LECs to add new UNE-P arrangements using unbundled access to local circuit switching pursuant to Section 251(c)(3)." TRRO ¶ 227. Although TRRO ¶233 refers to interconnection agreements as the vehicle for implementing the TRRO, had the FCC intended to use this process for new customers, we believe it would have done so more clearly. Paragraph 233 must be read together with the FCC directives that UNE-P obligations for new customers are eliminated as of March 11, 2005. Providing a true-up for new UNE-P customers would run contrary to the express directive in TRRO ¶227 that no new UNE-P customers be added.

CONCLUSION

Based on our review of the Verizon tariffs and the comments thereon, we conclude that several modifications to Verizon's tariff are required. Apart from these modifications, we believe the tariff properly implements the TRRO and Verizon's Pre-filing Statement commitments. Finally, we decline to prevent the tariff changes from flowing through to interconnection agreements that rely on tariffs for UNE terms.

The Commission orders:

1. The tariff revisions listed on Appendix A are allowed to continue in effect as filed, and newspaper publication of the changes proposed by the amendment and further revision directed by order clauses 2, 3, 4 and 5 are waived pursuant to §92(2) of the Public Service Law.

2. Within ten days of the issuance of this Order, Verizon New York Inc. shall file tariff amendments allowing for conversion of DS1 and DS3 loop and transport services to analogous services at the applicable resale rate in the event an order for conversion is placed before the FCC-mandated transition period, even if the order for conversion cannot be completed within the transition period.

3. Within ten days of the issuance of this Order, Verizon New York Inc. shall file tariff amendments to include the list of wire centers which no longer qualify

for UNEs. The supporting data and documentation upon which it based its determinations shall be provided to Staff for review and analysis at the same time.

4. By April 30, 2005, Verizon New York Inc. shall file its proposal for UNE-P price increases to resale rates for the period between March 11, 2006 and December 21, 2007 for the Zone 2 wire centers.

5. Within ten days of the issuance of this Order, Verizon New York Inc. shall file tariff amendments to apply the 10-loop cap for DS1 service only where there is non-impairment for DS3 transport.

6. The petitions for suspension, investigation and emergency relief are denied, except to the extent consistent with the foregoing Order.

7. This proceeding is continued pending compliance with the above ordering clauses following which it shall be closed.

By the Commission,

(SIGNED)

JACLYN A. BRILLING
Secretary

Appendix A

Tariff pages in effect March 12, 2005:

PSC NY No. 10 – COMMUNICATIONS

Preface –
Original Page 8

Section 5 –
2nd Revised Page 1.2
Original Pages 1.3 through 1.12

Appendix D –
Original Page 1

Issued: February 10, 2005

Effective: March 12, 2005

EXHIBIT F

STAMP & RETURN

ECFS Conf. #'s 2005323723130
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March 23, 2005

Jeffrey J. Carlisle
Chief, Wireline Competition Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: *Unbundled Access to Network Elements*, WC Docket No. 04-313;

Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, CC Docket No. 01-338

Dear Mr. Carlisle:

At your request, BellSouth filed with the Commission on February 18, 2005, a list by Common Language Location Identifier ("CLLI") code of those wire centers that satisfied the nonimpairment thresholds for high-capacity loops, transport and dark fiber as adopted by the Commission in its *Triennial Review Remand Order*.[1] Since this filing, BellSouth has provided similar information and supporting data to Competing Local Exchange Carriers ("CLECs") as well as responded to numerous questions from CLECs about the methodology BellSouth used to identify these wire centers.

In preparing these data and responses, BellSouth recently discovered an error in the mathematical formula that was used to count retail digital access lines on a per 64 kbps-equivalent basis, as required by the Commission's rules. This error impacted only retail business line counts and did not affect the quantity of UNE-loops, which were correctly stated on a per 64 kbps-equivalent basis. However, as a result of this error, retail business lines were overstated, and thus the wire centers meeting the Commission's nonimpairment thresholds were not correctly identified in BellSouth's February 18, 2005 filing.

[1] *Unbundled Access to Network Elements, Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, WC Docket No. 04-313, CC Docket No. 01-338, Order on Remand (Feb. 4, 2005) ("*Triennial Review Remand Order*").

BellSouth understands the necessity of correctly implementing the Commission's nonimpairment thresholds and recognizes that it is only entitled to unbundling relief in or between those wire centers where the Commission has determined CLECs are not impaired without unbundled access to high-capacity loops, transport, and dark fiber. Because of the importance of the Commission's unbundling determinations and because both the Commission and the industry must know with certainty where those wire centers are located, BellSouth has retained an independent third party to review the methodology BellSouth utilized in implementing the nonimpairment thresholds set forth in the *Triennial Review Remand Order* and to identify the specific wire centers where those thresholds have been met. Once this independent third-party review is complete, BellSouth will provide the Commission and the industry with the results.

This independent, third-party review should not delay implementation of the *Triennial Review Remand Order* in BellSouth's region. Before the Commission's unbundling rules took effect on March 11, 2005, state commissions in Alabama, Georgia, and Kentucky had ordered BellSouth to continue providing unbundled switching and high-capacity facilities until BellSouth's interconnection agreements have been amended. In order to allow its other state commissions to consider the issue, BellSouth advised CLECs and state regulators that it would not reject orders for unbundled switching and high-capacity loops, transport and dark fiber until the earlier of: (i) issuance of an order from an appropriate body, either a commission or a court, allowing BellSouth to reject these orders; or (ii) April 17, 2005. This independent, third-party review will be completed and the results disseminated before BellSouth rejects, or challenges through dispute resolution, any orders for new unbundled high-capacity loops, transport, and dark fiber pursuant to the *Triennial Review Remand Order*.

BellSouth sincerely regrets this error and apologizes for any inconvenience that it has caused. Please let me know if you have any questions or need additional information.

Yours very truly,

Bennett L. Ross

BLR:kjw

cc: Daniel Gonzalez
Matthew Brill
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Thomas Navin
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EXHIBIT G

ML-1
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ORS-1

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March 21, 2005

Docketing Division
Public Service Commission of South Carolina
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Columbia, South Carolina 29210

Re: **Emergency Petition of AmeriMex Communications Corp. for a Commission Order Directing BellSouth Telecommunications, Inc. to Continue to Accept New Unbundled Network Element Orders Filed in Docket 2004-316-C on March 7, 2005**

Dear Sir or Madam:

On behalf of our client, AmeriMex Communications Corp. ("AmeriMex"), we hereby withdraw the Emergency Petition filed by AmeriMex in Docket 2004-316-C on March 7, 2005. Since that time, AmeriMex has entered into a commercial agreement with BellSouth Telecommunications, Inc., rendering the Petition moot.

Please contact the undersigned if you have any questions or concerns.

Sincerely,

Glenn Richards
Jarrett Taubman
Counsel for AmeriMex Communications Corp.

cc: Patrick Turner
General Counsel-South Carolina
BellSouth Telecommunications, Inc.

36115-0000

Document #: 1467994 v.1

STATE OF SOUTH CAROLINA)
) CERTIFICATE OF SERVICE
COUNTY OF RICHLAND)

The undersigned, Nyla M. Laney, hereby certifies that she is employed by the Legal Department for BellSouth Telecommunications, Inc. ("BellSouth") and that she has caused a Letter in Docket No. 2004-316-C to be served upon the following this March 25, 2005:

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